

**RESTRICTIVE TRADE PRACTICES
COMMISSION**

**HEARINGS RELATED TO THE MANUFACTURE, DISTRIBUTION
AND SALE OF DRUGS**

SUMMATION SESSION

**HELD AT
OTTAWA, ONTARIO**

VOLUMES 24 and 25

NOVEMBER 28 and 29, 1961

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INQUIRY UNDER SECTION 42

OF THE COMBINES INVESTIGATION ACT

Relating to the manufacture, distribution and sale
of drugs


By Director of Investigation and Research

Combines Investigation Act

COMMISSION:

C. RHODES SMITH, Q.C.	-- Chairman
A.S. WHITELEY, M.A.	Member of the Commission
PIERRE CARIGNAN, Q.C.	Member of the Commission
F.N. MACLEOD	Combines Officer, representing the Director of Investigation and Research

Proceedings of hearings resuming at
10 a.m., Wednesday, November 29th, 1961,
in the City of Ottawa, in the Province
of Ontario.



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INQUIRY UNDER SECTION 2
OF THE COMBINES INVESTIGATION ACT

Relating to the manufacture, distribution and sale
of drugs

By Director of Investigation and Research
Combines Investigation Act

COMMISSION:

C. RHODES SMITH, Q.C. - Chairman

A.S. WHITELEY, M.A. Member of the
Commission

PIERRE CORRIGAN, Q.C. Member of the
Commission

F.N. MACLEOD - Combines Officer, representing
the Director of Investigation
and Research

Proceedings of hearings commencing at
10:00 a.m., Tuesday, November 28th, 1961,
et seq in the City of Ottawa, in the
Province of Ontario.



Ottawa, Ontario,
Tuesday,
November 28th, 1961.

---On commencing at 10:00 a.m.

THE CHAIRMAN: Well, gentlemen, we will resume the hearings in the drug inquiry which we left in Toronto some time ago. At that time Professor Dixon's evidence had not been completed, and I understand counsel wish to examine him with respect to the evidence he gave in Toronto.

Who of counsel will be questioning Professor Dixon first? Have you arranged among yourselves?

MR. HUME: I think, Mr. Chairman, Mr. MacLeod as I recall it, was cross-examining Professor Dixon when time ran out, and perhaps Mr. MacLeod can complete his examination, and Mr. Frawley indicated he had some questions.

MR. MACLEOD: Were you going to put some more questions to the witness?

MR. HUME: No. He is just produced for cross-examination.

THE CHAIRMAN: Mr. MacLeod, will you proceed?

MR. MACLEOD: Mr. Chairman, I have had from the photostatic material collected by the Director, copies of four balance sheets photostated, and the names of the companies and other identifying data cut out. The four sheets are identified as A, B, C and D. I wanted to show them to Professor Dixon and discuss them if I might.



1 THE CHAIRMAN: Are they before the Commission
2 now?

3 MR. MACLEOD: They are part of the returns
4 to the Director which are stated in the Statement of
5 Evidence to be part of the material being submitted
6 to the Commission.

7 MR. HUME: Mr. Chairman, I take it from Mr.
8 MacLeod's statement that they are not on the record,
9 that is the transcript of these proceedings, and
10 perhaps for those who are reading this record in
11 other places it might be advisable if these could be
12 filed as exhibits perhaps, and identified in that
13 way.

14 THE CHAIRMAN: Perhaps that would be the
15 right course. We will mark this group of documents
16 which have all been stapled together as Exhibit O-1.
17 To get this clear, the group marked Exhibit O-1
18 apparently relates to company A, is that right?

19 MR. MACLEOD: To company A, yes sir.

20 THE CHAIRMAN: And the second group, which
21 is two sheets, will be Exhibit O-2, and they are
22 relating to company B, and this next group, consisting
23 of three sheets of paper relating to company C will
24 be Exhibit O-3, and the fourth group of three sheets
25 for company D will be exhibit O-4.

26 ---EXHIBIT O-1: Photostatic copy of balance sheet
relating to Company A.

27 ---EXHIBIT O-2: Photostatic copy of balance sheet
28 relating to Company B.

29 ---EXHIBIT O-3: Photostatic copy of balance sheet
30 relating to Company C.



1 ---EXHIBIT O-4: Photostatic copy of balance sheet
2 relating to Company D.

3 MR. MACLEOD: I have certain typewritten
4 sheets which are simply compilations of the material
5 on Companies A, B, C and D, and are simply submitted
6 as a convenience. I want to relate these sheets
7 first to the question of whether the drug companies in
8 Canada which have been grouped for the purpose of
9 your study are homogenous firms in the sense that they
10 operate in the same market area. Perhaps we could
11 look at some figures, comparative figures on the
12 several sheets. On company A, the net sales are
13 what?

14 DR. DIXON: According to this data sheet,
15 three million plus.

16 MR. FRAWLEY: Is the compilation being marked
17 as O-5, sir?

18 THE CHAIRMAN: No, I was not marking that at
19 all. I understand that it is merely some figures
20 derived from the other four exhibits. If counsel
21 think it would be useful to mark it as an exhibit
22 I will do so.

23 MR. FRAWLEY: If it is being spoken to, or
24 spoken of -- I really asked you, sir, because I
25 thought I had missed you marking it.

26 THE CHAIRMAN: No, I didn't mark it, because
27 these are actual figures or returns received from the
28 companies and the others are figures in those
29 documents.

30 MR. MACLEOD: And the cost of sales is what?



1 MR. HUME: I think it would be more
2 convenient if my friend just put the figures to Dr.
3 Dixon instead of getting him to dig through these
4 things he has never seen before.

5 THE CHAIRMAN: I think you might refer to
6 the actual page on the document, so that it will be
7 clear for the record.

8 MR. MACLEOD: On page 2 of the first exhibit,
9 the cost of sales are shown as \$517,630.00 and some
10 cents. That is right, is it not?

11 DR. DIXON: Yes.

12 MR. MACLEOD: And on Exhibit No. 2 the net
13 sales are something slightly over six million, and
14 the cost of goods sold, excluding sales and other
15 expenses, is \$4,189,000?

16 DR. DIXON: Right.

17 MR. MACLEOD: Would that indicate to you,
18 as an economist, that these companies might be
19 operating in different fields, in the sense of
20 selling different products that were not competing
21 in the same market?

22 DR. DIXON: It could, but to be completely
23 honest, Mr. MacLeod, I cannot really read anything
24 into it unless I knew what the companies are.
25 Balance sheets and profit and loss statements are
26 very inadequate things. Certainly there is a
27 substantial difference in the percentage of the cost
28 of goods sold and net sales, but as to what
29 expenses, this can vary from year to year certainly,
30 but --



1 MR. MACLEOD: But does it give us some
2 indication that the companies may be dealing in
3 products that are not completely competitive?

4 DR. DIXON: It would indicate that they are
5 dealing with products that are manufactured in
6 different ways, in the sense that cost is a reflection
7 of the manufacture.

8 MR. MACLEOD: Yes, they are dealing with
9 products which, the cost of producing the actual
10 product is less in one case than the other?

11 DR. DIXON: It would appear to be so. This
12 of course does not say it is not competitive. One
13 would cost less from one manufacturer for one reason
14 or another than another product, but still compete
15 with each other.

16 THE CHAIRMAN: Mr. MacLeod, I am not sure
17 that from the items mentioned in these documents that
18 I fully grasp this. In Exhibit O-1 you refer to
19 net sales. That is the sales of all the goods.
20 Then you have the cost of the sales at \$517,000.00,
21 and on Exhibit 2 you refer to the cost of goods
22 sold. That is not necessarily the cost of sales.
23 Are the two documents referring to the same item, that
24 is the question in my mind?



1 MR. MACLEOD: On the second exhibit I have
2 just take the bare cost of the goods sold.

3 THE CHAIRMAN: Yes, \$4,189,000.

4 MR. MACLEOD: So that the figure for the
5 second company set out in the second exhibit includes
6 sales expense, office expense, advertising expense,
7 and so on.

8 THE CHAIRMAN: Does it include the cost of
9 of goods at all?

10 MR. MACLEOD: It is the only item that
11 would include it on the sheet, I think. It must
12 be.

13 MR. HUME: Yes, Mr. Chairman, I thank you
14 for your point. Perhaps I should for the purposes
15 of the record register my objection that what Mr.
16 MacLeod is seeking to do is put a hypothetical
17 situation to the witness on which the witness can
18 give an opinion. But I think on Exhibit O-1 the
19 cost of sales no doubt includes the goods sold, but
20 cost of sales may include other things other than
21 cost of goods sold, and unless Mr. MacLeod will
22 indicate that he is comparing like with like, it is
23 difficult to answer the question.

24 THE CHAIRMAN: If the item in ~~Exhibit~~ O-1
25 includes the cost of goods, perhaps Mr. MacLeod's
26 position would be strengthened.

27 MR. HUME: As I say, unless they are like
28 with like.

29 THE CHAIRMAN: I think his position is being
30 strengthened if that is the case.



1 MR. FRAWLEY: Mr. Chairman, in view of the
2 fact that my friend Mr. Hume rose to make an objection,
3 I think this is a good time for me to make a very
4 short statement as to my position.

5 I protest that these documents should be
6 put in with the names of the companies deleted. I
7 find that rather an extraordinary situation, and I
8 want the record to show that I protest against it.

9 When one looks at the green book and finds
10 on page 169 the plain statement that Bristol imports
11 from its U.S. parent at a cost of slightly over
12 \$140.00 kilogram (up from \$90.00 in 1958 -- the
13 reference is to tetracycline -- and when one finds
14 on the same page that Upjohn reported it paid \$404.50
15 for tetracycline base, one also finds Cyanamid
16 reported it cost \$644.15 per kilogram and Pfizer
17 imports from Charles Pfizer and Company at prices
18 varying from \$156.71 to \$525.36.

19 Now, I would like to recall the circumstances
20 under which this investigation was made public. The
21 Minister of Justice laid on the table of Parliament
22 this document, "Material collected for submission to
23 the Restrictive Trade Practices Commission in the
24 course of an inquiry under Section 42 of the Combines
25 Investigation Act relating to the manufacture,
26 distribution and sale of drugs". It is dated February
27 28th, 1961. Now, that was no ordinary inquiry
28 under Section 42 of the Combines Investigation Act.
29 I have never heard of a document of this kind being
30 laid on the table of Parliament. I do not think



1 it is the intention of the Minister of Justice or
2 of parliament in accepting this document that the
3 inquiry conducted by you, sir, and your fellow
4 commissioners should be conducted half in public and
5 half in secret. I think it is completely
6 unsatisfactory that now Mr. MacLeod, having in mind
7 the ruling and procedure and technique that have
8 been followed in other cases, has filed this so that
9 one cannot tell the companies involved. As far as
10 the people I represent are concerned, the procedure
11 is quite unsatisfactory. The information disclosed
12 by these financial statements should be made public,
13 just as the information relating to tetracycline
14 where Cyanamid reported it manufactured tetracycline
15 in Canada at a cost of \$644.15, and I want the record
16 to show that I protest at the reception of the
17 information in this fashion. I think these financial
18 statements and financial material that have been
19 filed in O-1, O-2, O-3 and O-4 should be made public
20 and the public who have seen the Green Book, which
21 means almost everybody in Canada, should also see
22 the documents that Mr. MacLeod is now filing with the
23 names of the companies eliminated. I see no basic
24 difference in the information that Mr. MacLeod put
25 into the Green Book, and properly put into the Green
26 Book, and the material he is now filing, and I would
27 make a formal application that these documents be
28 resubmitted showing the names of the companies
29 involved.

30 MR. HANSARD: Mr. Chairman, my friend comes



1 representing the people of Alberta and says that
2 this document has been made a public document because
3 it was tabled in the House of Commons. You know,
4 Mr. Chairman, and Mr. MacLeod knows that the
5 statements from which all these pieces have been cut
6 out were filed with this Commission in response to
7 requests for returns of information on a confidential
8 basis, and what Mr. MacLeod is endeavoring to do
9 by cutting these out is to protect the confidence
10 under which this information was obtained. The Green
11 Book is not a report; it starts out by saying it is
12 a compilation of material collected by the Director.
13 That Green Book, in my submission, was a confidential
14 document, and still is, and nobody can, by saying
15 because it has been tabled in the House of Commons --
16 which should never, in my respectful submission,
17 have been done -- nobody can come here and suggest
18 that confidence has been breached. All these
19 companies have their own private records and
20 information, and they have been induced to put
21 returns in on a certain basis, and because something
22 subsequently happens it doesn't in any way excuse
23 this Commission from preserving the confidential
24 nature of the information. I don't think Mr. Frawley's
25 objection is well-founded, and if there are any
26 objections to be made, I would protest vigorously
27 that any information obtained from my clients should
28 be treated in that fashion.

29 MR. MACLEOD: Mr. Chairman, the Director
30 felt that it was his duty to carry out the inquiry as



1 completely and adequately as possible; it was his
2 statutory duty to do so. But at the same time it
3 was always his custom to preserve as far as possible
4 the confidential nature of any information received.
5 The only information of a confidential nature in the
6 statement is as to the specific cost of drugs. It
7 was not put in the statement. All the other
8 information about profits, research, expenditure,
9 and development -- you will recall that particular
10 table is lettered A, B and C and given in percentage.
11 I have carefully checked and I have satisfied myself --
12 I hope I am right -- that nothing in any of the tables
13 which are in the statement are the key to any of the
14 documents put in this morning. I say that simply
15 the position of the Director is that we are trying
16 to make this as complete an inquiry as possible
17 without, on the other hand, violating the conditions
18 under which we obtained the information. I don't think
19 I can say any more than that, sir.

20 The situation is rather complicated at
21 this stage in this way, that the Green Book has been
22 submitted to the Commission and it is seeking further
23 evidence on it, and the Director is trying to assist
24 in this matter. But this whole inquiry will pass
25 completely into the hands of the Commission shortly,
26 and so therefore the position of the Director
27 doesn't matter. But as long as the Director has any
28 connection with it, he feels it is his duty to
29 preserve the anonymity of any information without
30 impeding the inquiry.



1 MR. FRAWLEY: Mr. Chairman, may I reply
2 briefly to my friend Mr. Hansard and to some extent
3 to Mr. MacLeod?

4 In my submission sight has been completely
5 lost of the nature of these proceedings. It is all
6 right to say that the information was put in in
7 confidence. Perhaps the information that Cyanamid
8 manufactured tetracycline at a cost of \$644.15 per
9 kilogram was also put in in confidence. But this
10 is not an ordinary inquiry under Section 42 of the
11 Combines Investigation Act, notwithstanding the
12 character of the position of Mr. Hansard.

13 THE CHAIRMAN: In what respect is it not
14 an ordinary inquiry?

15 MR. FRAWLEY: Has counsel represented the
16 public and taken part in proceedings under Section 42
17 in proceedings similar to this, inquiries into the manufacture
18 sale and distribution of some other commodity? I
19 am here protesting, because the Government of Alberta
20 has gone on record, and so has the Legislature, that
21 the cost of drugs in Canada is too high. That is
22 why I am here. I am not here representing the law
23 officers of Alberta interested in finding offences
24 against my friend Mr. Hansard's clients on which they
25 can be prosecuted; nothing is more removed from my
26 interest in this matter. It would be presumptuous
27 if I were here representing the law officers of
28 Alberta. I am not concerned with whether there
29 was a crime or not; I am concerned with whether the
30 cost of drugs in Canada is too high, and therefore



1 it is completely frustrating to be invited -- and,
2 frankly, that is my position. The Premier of
3 Alberta and the Minister of Health in Alberta were
4 made aware of these proceedings -- so that he can
5 pursue criminals? -- not at all, not at all.

6 THE CHAIRMAN: There has been no allegation
7 of crime against anybody.

8 MR. FRAWLEY: The Commission is sitting to
9 consider whether or not there have been any
10 monopolistic situations or restraint of trade which
11 would bring them within the Combines Investigation
12 Act. When I say criminal -- please, I will withdraw
13 any word which touches the tender susceptibilities
14 of my friend Mr. Hansard.

15 MR. HANSARD: Mr. Chairman, my friend has
16 no right to say that, and I think he should keep
17 himself within bounds.

18 MR. FRAWLEY: I withdraw unreservedly
19 any implication of crime against my friend's clients.
20 I am concerned in trying to find out whether the
21 cost of drugs in Canada is too high. That is what
22 the Legislature in Alberta said, and that is why I
23 am here. This is not the ordinary investigation under
24 Section 42, otherwise why would counsel for the public
25 be invited, I say even allowed here? Why should
26 I be shown the door when I came in? My friend Mr.
27 Hansard said I should have.

28 MR. HANSARD: I never said a word. I
29 ask my friend Mr. Frawley not to be so offensive.
30 Maybe you don't mean it, but you certainly succeed.



1 THE CHAIRMAN: Mr. Frawley, this is an
2 inquiry, as we see it, under Section 42, and while
3 the Government of Alberta whom you represent is
4 concerned about the question of whether drugs are
5 priced too high, our interest in the matter and in
6 the interests of this inquiry are directed to a
7 specific type of question, not whether are the
8 price of drugs too high but is the present price of
9 drugs due to any monopolistic situation or restraint
10 of practice. That is what we are concerned about,
11 and that is why we gave the provincial governments
12 any opportunity to present any evidence they had.

13 MR. FRAWLEY: With the greatest respect, sir,
14 we would be very presuming unless the Minister of
15 Justice said: "Well, my machinery has broken down.
16 I would like the provincial officers to come here."
17 That is not the case. He has clipped this document
18 from the table, and that means everybody in Canada
19 is entitled to read it and therefore appear before
20 this Commission and represent any interest they choose
21 to represent. I am representing the Province of
22 Alberta.



2/Ry/dpw

1 I simply make my point in terminating this
2 application that there is an unjustified inconsistency in
3 putting on page 169 the information that is there and
4 refusing to disclose the names of the companies involved
5 in the financial statement. It is a futile and frustrating
6 situation to be asked to look at it, because it does not
7 mean anything at all to me. I cannot associate any of the
8 companies with any of the companies whose costs are
9 disclosed on page 169. That would be the only useful
10 purpose I would have for these. I protest against what
11 has happened, and I can't do any more.

12 MR. HUME: I haven't been heard on this
13 yet, Mr. Chairman, and I would like to say this on behalf
14 of the manufacturers. Mr. Frawley's frustration was, of
15 course, apparent in Toronto when he attempted to embark
16 upon a line of questioning which indicated he completely
17 misunderstood the purpose of this inquiry, notwithstanding
18 the fact you have said on at least half-a-dozen occasions
19 that the Commission is only concerned within the ambit of
20 Section 42, and if Mr. Frawley is invited here, as he was
21 -- and I was too, and we are grateful for the opportunity
22 of being here -- he was invited here to keep himself within
23 Section 42. He has sought to run this thing all over the
24 map, and that is the only reason he finds himself frus-
25 trated this morning.

26 MR. FRAWLEY: I want the record to show my
27 protest.

28 THE CHAIRMAN: The Commission has always
29 taken the position with regard to any inquiry before it
30 that information which is confidential to any company or



1 individual, or which, if disclosed, might be of competitive
2 advantage to its competitors or any of them should not be
3 disclosed if it was at all feasible to retain it on a
4 confidential basis. We have had to take the position that
5 if in preparing our report to the Minister we felt it was
6 necessary to disclose information, we would have to do so;
7 but I can't recall any case in which we really felt we
8 had to disclose information which we had been requested
9 to retain on a confidential basis. Normally, we have found
10 it possible to get the factual situation expressed in a
11 way which would show what the picture was without disclo-
12 sing detailed information about particular companies which
13 might be detrimental to those companies in the conduct of
14 their business or might assist others who are in competition
15 with them. That has been our position, and it has only
16 applied under Section 42, as under Section 8.

17 While your protest, Mr. Frawley, is noted,
18 I think the Commission must decline to act on your propo-
19 sal.

20 I might say this for the record, that the
21 Green Book, the statement of material collected by the
22 Director, was not filed by the Minister of Justice, as I
23 understand it, in the House of Commons for the purpose of
24 making this a public inquiry. It was only filed by him
25 after repeated requests for it in the House following an
26 order made by myself that the inquiry would be conducted
27 in public, and up to that time he refused to table it in
28 the House. It was not until after I had ordered this
29 inquiry be conducted in public that he went to the extent
30 of tabling it. That was the basis of it. The inquiry is



1 still under the Commission. That is the position I want
2 to make clear. We will have to decline to act on your
3 proposal, Mr. Frawley, because these documents appear to
4 be direct financial statements of the operations of certain
5 companies, and to disclose the names of the companies
6 might be detrimental to them without being of any added
7 advantage to the work of the Commission. We will have to
8 see what value these documents have.

9 MR. FRAWLEY: I take it these are filed
10 with the Commission in their original form with the names
11 of the companies being shown?

12 THE CHAIRMAN: These are the exhibits we
13 have.

14 MR. FRAWLEY: I suppose I haven't had a
15 very long practice under Section 42 -- none at all -- but
16 do I understand this is all the Restrictive Trade Prac-
17 tices Commission will have -- the document that has been
18 mutilated in this fashion -- and I do not use the word
19 "mutilated" in any offensive manner. Will this Commission
20 not have the full document showing what companies A, B and
21 C made?

22 THE CHAIRMAN: I think we will have all the
23 information which has come in. This will be an indication
24 to us as to how the material might be used.

25 MR. FRAWLEY: But there again, this is the
26 public filing, as it were, and then privately there will
27 be filed with the Commission the actual documents which
28 the Director received from the companies?

29 THE CHAIRMAN: I think the material will be
30 in the hands of the Commission with all the returns made



1 by the companies or by anybody else in the course of the
2 inquiry to the Director.

3 MR. FRAWLEY: When the Commission makes
4 its report to the Minister of Justice, or whoever it does
5 report to, they will at that time have had documents of
6 which these are the changed copies?

7 THE CHAIRMAN: I don't think there is any
8 doubt about that. These are the exhibits from which we
9 will work.

10 MR. FRAWLEY: These are what I choose to
11 call the exhibits that are made public.

12 THE CHAIRMAN: They are made public in the
13 sense they are filed in this hearing which is a public
14 hearing.

15 MR. MACLEOD: This, of course, would form
16 part of the information obtained by return and by supple-
17 mentary letter referred to in the last sentence of para-
18 graph 7 on page 3 of the statement.

19 THE CHAIRMAN: Yes.

20 MR. MACLEOD: Could we look at company C:
21 here we find net sales of just under \$3,000,000 --
22 \$2,995,377.38; and cost of goods sold of \$931,332.36.
23 Again, are those figures any indication to you of the
24 competitive positions of the companies A, B and C?

25 DR. DIXON: First of all, I am appearing
26 here as an expert witness which implies something about
27 the statements I make.

28 MR. MACLEOD: Yes.

29 DR. DIXON: And frankly, I am afraid of
30 making any statements. In the first place, we have four



1 companies here in this table, and in the industry they
2 are studying there are 200. Obviously, a couple of these
3 companies belong up near the top of the industry; it is
4 very clear. Obviously, a couple of the others belong
5 way down at the bottom. There is going to be a range in
6 any industry. I can only quote the example of the automo-
7 bile industry in 1955 in the United States in which
8 General Motors had obtained 30% return after taxes on its
9 investment, and Chrysler had lost. I would still say
10 these companies were definitely competing, but there was
11 a vast difference in their operating statements.
12 Obviously, it is possible all these firms listed are not
13 competing across the board with all the other firms on
14 the same product line at the same point of time. This is
15 obvious because they don't all make all of the products.
16 I think all I can say is, there would appear to still be
17 a rather substantial number of firms competing one with
18 another at any point of time in any product class, and to
19 me, the more significant thing, that most of the other
20 firms have the potential for so doing at any time if it
21 appears reasonable to do so. They are in the industry;
22 they are not outside the industry. Firms try to specialize
23 to some degree and, frankly, I am quite afraid of trying
24 to make any statements on the basis of four companies when
25 the industry is so much broader than this.

26 MR. MACLEOD: When the Commission looks at
27 all the returns, and if it finds -- and this is hypotheti-
28 cal at the moment -- if it finds these companies selling
29 patented tranquilizers and antibiotic drugs should be in
30 the high income profit class, and that their cost of



1 goods sold should be relatively low in comparison to their
2 sales, would this indicate these form a segment of the
3 industry that is insulated to some extent at least from
4 the full competitive forces of the industry?

5 DR. DIXON: Yes and no. I think this ties
6 in with what I said about innovation: obviously, you can't
7 look at this without talking about innovation being the
8 most significant competitive force in this particular
9 industry -- also fairly important in other industries.
10 Clearly patents play a role or they would not exist. I
11 think this is obvious. If innovation is one of the most
12 important competitive elements, and by this I mean the
13 way in which the market forces firms to produce what the
14 market wants, in this case I would suggest it is primarily
15 innovation. Then, the incentive structure to produce
16 these innovations is obviously relevant to the competitive
17 situation. As I think I quoted in my report, as Schum-
18 peter made the remark -- he used the word "temporary mono-
19 poly", and this is not monopoly in the sense of the act,
20 but in the more conventional economic terminology, rather
21 like the brakes on a car: that you need them to go fast.
22 If you look at an industry, as a balance sheet or one
23 profit and loss sheet indicates, you get a static situation
24 which may well indicate that one or two or five or ten
25 firms have super-normal profits -- if there is any rele-
26 vance to the concept of normalcy. But, the significant
27 thing -- or, one of the significant things, is that this
28 is part of the mechanism whereby the firms continue to
29 want to climb into the market, to want to fight one with
30 another. There must be a reason for somebody doing



1 something. If we spend money and try and take risks and
2 nothing happens, and we can't look for any possibility --
3 I don't say we will get it, but people try and fail, but
4 there has to be a possibility, otherwise nobody is going
5 to try -- at least, in our present economy. All I can say
6 is, it would not prove anything necessarily in the competi-
7 tive situation overall. It obviously indicates that tempo-
8 rarily somebody has an advantage. Clearly, they have tried
9 to get that advantage and they are going to continue to
10 get that advantage.



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1 MR. MACLEOD: Let us get off on another
2 track for a moment. I want to be clear on something you
3 said, obviously they are not going to try with no gain.

4 DR. DIXON: I said that they do not see
5 the possibility, I said they might not make it, they
6 might not make it but the rainbow has to have at least
7 a potential pot of gold at the end before they will try.

8 MR. MACLEOD: Surely any industry where
9 there is an ease of entry that it is not hard to get into
10 is not the normal situation for somebody to make a fairly
11 large - capital to be attracted into the industry and
12 other companies rushing in resulting in over-production
13 and firms all over the industry finding a pattern being
14 more or less repeated again and again.

15 DR. DIXON: Yes, but as I said the last
16 time, you cannot draw any conclusions one way or another
17 about the industry right now because for all practical
18 purposes it is a new industry. Fifteen years ago this
19 industry did not exist when there were some other indus-
20 tries that did exist. Again coming back to the automotive
21 industry it happened to be, if one looks back at products
22 made by the Ford Motor Company in the initial stages, the
23 figures were really staggering. You find someone putting
24 in \$5,000 in 1907 and getting back \$12,000,000 in 1919
25 plus an additional \$12,000,000 in dividends. He happened
26 to be a benefactor of mine because he set up the school
27 at the University of Michigan. However, then the Ford
28 Motor Company operated at a loss from 1929 to 1949,
29 operating in the red. There is a time factor here and
30 I have said several times publicly as well as privately



1 that I anticipate many of these situations may happen in
2 the pharmaceutical industry in the not too distant future.
3 I believe I have referred the Commission to a couple of
4 articles written by different people where this very
5 thing will happen in the pharmaceutical industry in the
6 next few years. Firms will not have the same ease of
7 getting along, there has been more expenditure and some
8 firms will get into difficulty but it will take the next
9 few years to work out and six, seven or eight years is a
10 short time.

11 MR. MACLEOD: And the fact that most of the
12 companies are old, long-established firms indicates what
13 you speak of will happen with pharmaceuticals?

14 DR. DIXON: Not really, the industry as of
15 now is not the same as the industry of 20 years ago when
16 it was an entirely different pattern of events. It was
17 standard, almost standard private manufacture 20 years
18 ago with some obvious aberrations in the way of certain
19 items. However, in the last 20 years it has not been
20 true of the industry, it has been characterized by an
21 extremely volatile situation in which all sorts of new
22 products have come in and some firms have made fantastic
23 success, some of the rates of return indicate that. I
24 do not mean cost of goods, the rate of return on investment.
25 Conversely, individual firms have been striving and in
26 general still wait for a good rate of return and in a
27 period like this for the ones that are successful it would
28 be higher than it would be under a more stable kind of
29 situation. I therefore definitely anticipate that if it
30 is higher than one can expect to see over the next decade



1 or two - I would not go any further than that.---

2 MR. MACLEOD: Well, to get one point clear,
3 you spoke of other products, you are not suggesting that
4 they stopped the maintenance of penicillin on the market,
5 are you? For instance, is it not true that the typical
6 economic experience seems to be because it was not patented
7 that too many firms went in, prices dropped down and firms
8 moved out but all drug firms, at least most of them, still
9 sell penicillin?

10 DR. DIXON: A lot of them have gone out of
11 it, as a matter of fact.

12 MR. MACLEOD: They have gone out of the
13 manufacture but you will have some penicillin in some
14 form or other to be sold by practically every large drug
15 firm but not some of the smaller ones.

16 DR. DIXON: I think it is a necessity.

17 MR. MACLEOD: Certainly the evidence given
18 to the Commission will show that in some cases they are
19 selling penicillin at a fair profit, that is typical
20 experience, is it not, when a product continues to be used?

21 DR. DIXON: When a product goes through a
22 cycle, I think this is the thing, every product class has
23 the same cycle; it starts out being a specialty, a very
24 high rate of return and the extra profits that go with this
25 and the only difference here is the time period. Some
26 industries may be able to exercise a real monopoly in the
27 sense of continuing this for 50 years or 20 years but the
28 next stage is a stage of an attempt at vigorous product
29 differentiation, an attempt to get the major share of the
30 market, a stiffening of all other product research and



1 competition. The third stage, the stable stage, shows a
2 rather substantial number of firms getting out and the
3 firms who remain having a fairly average rate of return
4 on a stable product. Some firms never get through, there
5 is always an innovation that comes along that never lets
6 an industry get to this last stage. Some firms, unique
7 individual firms, and I can conceive an example where
8 many of these firms may stay in the first stage, not all
9 the time, but it is unlikely.

10 MR. MACLEOD: You keep coming back to the
11 staple product and you refer to automobiles. Surely the
12 automobile of 1948 is not comparable to the penicillin here
13 which was discovered in 1948 and is still on the market
14 and widely used and we have out of this market certain
15 specialized markets so that the industry is different in
16 that way.

17 DR. DIXON: So surely do we have - by the
18 way, I want to make reference, I want to make the record
19 clear because I would not want to call the automobile a
20 staple yet although it is quite close in some instances
21 but there are some automobiles that have certain segments
22 of the market.

23 MR. MACLEOD: May I interrupt? Do you
24 consider the truck market and the car market competitive
25 with each other?

26 DR. DIXON: Only on the fringes.

27 MR. MACLEOD: Well, is that not precisely
28 the situation that obtains in the truck industry?

29 DR. DIXON: I said that not all firms will
30 be competing in cars but there are a number of them



1 competing in each of these areas and my two points, they
2 have the capability of coming in just the same as the
3 automobile manufacturers who at one time rarely if ever
4 used to make much in the way of trucks, that was a separate
5 activity, just the same as the bus industry and in the case
6 of another automobile firm the locomotive industry. You
7 all know what happened to the locomotives in the 1930's
8 when G.E. started to make diesels, it was a real shock to
9 the firms operating that area.

10 MR. MACLEOD: But is not the premise that
11 you develop in your very excellent presentation based
12 really largely on this concept of the products of the
13 drug industry being homogeneous? You take a bunch of
14 firms that D.B.S. puts in a certain classification and
15 say "Let us take the aggregate figures over-all on those".

16 DR. DIXON: I do not think so. I was
17 using those figures because they really did have studies
18 of concentration and conclusions can be drawn from these.
19 I can give you figures of other firms in which their view
20 still crosses the board, there is not a complete image
21 existing in a relatively small number of industries. I
22 think the key point here is we do not have to argue with
23 the Commission because they will decide. I am suggesting
24 to you that your premise and your conclusions developed
25 in your submission depend very largely on the fact that
26 the products are homogeneous? I am not suggesting you are
27 right or wrong at the moment but I am asking you for the
28 purpose of your conclusion.

29 DR. DIXON: I do not think - if I have
30 given that impression I am sorry. In fact, I spent a



1 rather large part of the report speaking about the product
2 and about competition, the production which has to have
3 some heterogeneity in the industry. I have said several
4 times today that obviously not all the firms - a situation
5 where there are a larger number of firms in the industry and
6 besides not all make the same thing.

7 But it would appear there are a fairly
8 substantial number of firms in all major categories,
9 there is quite a bit of cross-substitution, there is still
10 competition between barbiturates and tranquilizers and a
11 few other things.

12 MR. MACLEOD: That is my point categorically
13 that your thesis depends on that.

14 DR. DIXON: I was saying that there is also
15 competition in tranquilizers and also there is another
16 point if I may draw a conclusion about you, you are
17 examining with the idea that there is no possibility of
18 any firm coming in with a profit, it makes a lot of money.
19 I am saying there is, this has happened in the industry
20 but I do not hang my hat on homogeneity, not at all.

21 MR. MACLEOD: I said your thesis depends,
22 if you take a large group of firms and said "Let us
23 consider these together, put all the aggregate totals
24 together and draw some conclusions", if the firms are not
25 making homogeneous products, they are only competitive to
26 a limited extent and inasmuch as your conclusions are
27 concerned they may be wrong.

28 DR. DIXON: I say no.

29 MR. MACLEOD: If somebody came to the
30 conclusion that the situation in the industry was



1 different than you suggested, would not your conclusion
2 follow that?

3 DR. DIXON: No, because I maintain I have
4 talked about things which have to do with the dynamism
5 and the cross-movement of the industry and potential in
6 the industry. My thesis does not hang on homogeneity.
7 I can say no more than that.

8 MR. HUME: Mr. Chairman, my friend is able
9 to produce an economist to present any views he likes but
10 I wonder if it is very helpful for my friend to keep
11 arguing with the witness. If he wants to put questions
12 then he can do so and Dr. Dixon is here to answer them
13 but he should not argue. I suggest there is a better way
14 of doing this rather than arguing.

15 MR. MACLEOD: I had not intended to argue,
16 however, I do feel that this is very important because
17 in your examination of the industry you took 200 industries
18 and we worked from that on the assumption that these 200
19 companies or establishments formed part of precisely the
20 same industry or an industry that is so closely connected
21 with it can be considered as one in economic study. Now,
22 surely that follows, Dr. Dixon?

23 DR. DIXON: It is clear that at the fringes
24 there may be firms which are around not just the same as
25 other industries. There are firms which compete in the
26 pharmaceutical business rather than in the food industry.
27 I do not want to give the impression that all of these
28 200 firms line up with identical product lines and compete.
29 More to the point I want to make it even more emphatic
30 that it is not necessary for there to be a competition of



1 industry, it is not necessary for every firm to compete
2 with every other firm on every other thing which it has
3 made. I am not talking about this report but my own
4 opinion and feelings on the subject that the significant
5 thing is that there will be very active competition at
6 the margin. They surely do always overlap competitively
7 from what I could see - there may be information I do not
8 have but from what I can see there are a number of firms
9 in many cases, many firms involved in these various
10 product areas. There are many more firms that if it were
11 obviously profitable for them to be in they would be in.
12 There are certainly other firms outside of the industry
13 who come in and if they wish to come in the thing is not
14 static. You cannot take a thing and say it is or is not
15 competitive because it is not static and is a very hard
16 and difficult thing to make any evaluation of in what is
17 a very dynamic industry. I think the proposal here is
18 that the industry is even more dynamic than you think
19 because it has changed its total character in 15 years.

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1 MR. MACLEOD: I wanted to ask you if the
2 three companies whose statements I put before you
3 as Exhibits 1, 2 and 3 were all subsidiaries of
4 American companies. Let us say they are all
5 subsidiaries of foreign companies, not American. Do
6 you think that affects the balance sheet they arrive
7 at in Canada, the expenses in Canada, and so on?

8 DR. DIXON: They could. This not only
9 affects them as individuals, this is one of the
10 problems in making financial statements. There is
11 a great difference in the way people evaluate things.
12 For instance, I think there is some safety when you
13 do this on an aggregate basis, for instance from the
14 income tax statistics, because the odds are that
15 the different errors will cancel out, but it is
16 conceivable that the equity position of this firm
17 is rather out of line, or something else is out of
18 line. It certainly could make a difference if it
19 were a subsidiary of anything, even of a Canadian
20 company, because it will depend on the way the
21 intra-company accounting takes place. You can
22 make a company as profitable as you want on a
23 subsidiary basis, which makes it very difficult.

24 MR. MACLEOD: And having it in mind that
25 by far the largest proportion of the companies in
26 this trade in Canada are subsidiaries of foreign
27 companies, does not that make the Canadian statements
28 pretty unreliable?

29 DR. DIXON: Well, I think on an individual
30 basis it means we are in some difficulty. This is



1 one of the reasons I used for much of my figures
2 the income tax statistics, because I think the income
3 tax department is liable to insist on a pretty
4 realistic return by the company. Most of my
5 figures in the return were out of the income tax
6 statistics. I made an initial attempt to find
7 statements, and of course I ran into the problem
8 that many of them are not published, and I gave that
9 up. I feel that the income tax statistics would
10 be better, because among other reasons this is likely
11 to be the most accurate reporting, in the sense
12 that the Department has the assumption of making a
13 report, one, consistent and two, reflecting the
14 profits of that operation, rather than another
15 operation. So I think these figures in the aggregate
16 would be better than those figures drawn from
17 financial statements.

18 MR. MACLEOD: In the instances of such
19 things happening as one company being charged \$3.00
20 for a particular drug by its American subsidiary,
21 and a second company being charged \$1.00 for the drug
22 by the American subsidiary, is it your understanding
23 that the income tax authorities would go after that
24 situation?

25 DR. DIXON: Allocation of costs is a pretty
26 peculiar thing in many cases. As a matter of
27 fact, I would suggest, and this industry is as good
28 as any other for example, that any allocation of
29 costs is a lot of nonsense as far as individual
30 products are concerned. The cost accountant is just



1 pulling figures out of the air with no rhyme or
2 reason or sense. I find it very difficult to see
3 how one could possibly, and so what could happen in
4 this case -- I remember I worked for a mail order
5 concern at one time, and you could make almost any
6 department or products within a department have a
7 profit or a loss on perfectly logical, consistent,
8 systematic grounds.

9 I don't know what the Income Tax Department
10 do. I think certainly they try. I think in this
11 case it would make them one, and yet there might be
12 all sorts of reasons for it, one of which for instance
13 how do they allocate overhead in this particular
14 firm, and it gets down to a pretty difficult point.

15 I would argue that there is no way of
16 evaluating a firm except on its total operations, that
17 individual product figures have no relevance because
18 the firm is not selling a product, it is selling a
19 package of products. You cannot walk into a
20 supermarket with any accuracy and say this product
21 is selling at a loss and that product is selling at
22 a profit, because the store is selling a total
23 package of services, and they may be giving stuff
24 away, they maybe will give you \$10.00 to have it,
25 just as a store will give away parking, and obviously
26 charge you higher on something else. It is a
27 fantastic problem. I don't think as a matter of
28 fact that there is any rationale for firms attempting
29 to price when they have many products on a cost
30 basis.



1 MR. MACLEOD: Yes, surely the price should
2 be established, as you said, on competition?

3 DR. DIXON: On demand.

4 MR. MACLEOD: And it depends therefore to
5 an extremely large measure on the competition they
6 have in the industry. I want to ask you about
7 just a few statements in your --. On page 4 you
8 say, and this is about line 4, I think:

9 "These new entrants, having
10 their main sales and profit support
11 outside of the industry they are
12 entering, and presumably having
13 some cost advantage (such as of
14 productive facilities) to have
15 moved in the first place, are able
16 to compete on a vigorous basis, and
17 can often, if necessary, sustain
18 substantial losses over a period
19 of time in order to obtain a
20 position in the market."

21 Is that a correct assumption in this sense,
22 that can a new entrant simply be attracted by the
23 high profits being made in the field? There is no
24 need for him to obtain a cost advantage, or is it
25 necessarily true that all who come in have a cost
26 advantage?

27 DR. DIXON: I am speaking about a specific
28 type of potential entrant, and that is a large
29 firm in a particular industry, and particularly the
30 way these firms go in is on the presumption, and this



1 is on the basis of all sorts of studies, that they
2 have some natural advantage of skill, or money, or
3 productive capacity, or something, and they see a
4 big market and sometimes this is all it is, the mass
5 market. That is big relative to theirs, and they
6 have some excess, and sometimes the excess is only
7 managerial skill, and they go on the assumption, on
8 the faith that they will be able to bring their costs
9 down, and they go in shooting for the market. This
10 is only from the pattern of behavior of all these.
11 There are some who start on a shoestring, and some
12 are still on a shoestring, and some are not any more.
13 Some of the firms who have come in in the last couple
14 of years.

15 MR. WHITELEY: You just now suggested that
16 in some circumstances the new entrant would be aiming
17 for a mass market. Do you consider this particular
18 industry offers opportunities for mass marketing?

19 DR. DIXON: I am sorry, let me correct that.
20 A major sales position. In other words, they are
21 not going out for a corner of it. I am not talking
22 about every entry now, but this is a particular pattern
23 of these kinds of entrants. That is the large,
24 multi-operational firm such as biochemical firms, who
25 intend to go in and try to become a major producer
26 in the market.

27 MR. WHITELEY: I am just reviewing this
28 particular industry. Do you not think it has
29 certain limitations for that type of entrant? In
30 other words, they cannot make the type of appeal which



1 might be possible in some industries, where you can
2 sell directly to the public?

3 DR. DIXON: They can merchandise through
4 channels to other segments of the trade.

5 MR. WHITELEY: In what fashion?

6 DR. DIXON: To the retail pharmacists.

7 MR. WHITELEY: Don't you think they have
8 particular habits in their purchasing which would be
9 more difficult to overcome than in the mass consumption
10 industries?

11 DR. DIXON: I don't think I can make a
12 generalization on that. Sometimes it certainly would
13 be in some industries.

14 MR. WHITELEY: I mean in this industry?

15 DR. DIXON: As compared to some industries,
16 some segments of the so-called mass market would be
17 easier to get into than this, and others would be more
18 difficult. I think there seems to be a fairly clear
19 indication in this industry that if in fact you are
20 making a good product, and process it through the
21 channels, the retail pharmacists will in fact stock
22 your product.

23 MR. WHITELEY: What channel is that?

24 DR. DIXON: It would seem almost by the
25 definition of the retail pharmacist's operation that
26 if someone comes out with a product which they can
27 convince the physician is a reputable product, that
28 this does compel stocking by the trade, because of
29 prescriptions being ordered, and which must be filled,
30 and this in many cases is of course a very difficult



1 thing to accomplish, even if you convince the consumer.
2 Certainly I agree that this is not an industry in
3 which we have a typical mass marketing kind of thing.
4 I was meaning the major firm in the industry. When
5 this kind of firm comes in they generally come in as
6 a major competitor, rather than as a fringe competitor.

7 MR. WHITELEY: Have you found any
8 illustration of this movement that you are discussing?

9 DR. DIXON: In one or two of the chemical
10 and food firms they have been moving in, but I think
11 as a matter of fact of late there have been very few,
12 and I think there is a very good reason for it. I
13 wouldn't recommend myself anyone going in right now.

14 MR. WHITELEY: Have not there been instances
15 of firms whose name is already established very well
16 in the medical profession?

17 DR. DIXON: Possibly there are.

18 MR. WHITELEY: Can you think of any other
19 examples of them?

20 DR. DIXON: I cannot remember the name of
21 a chemical firm that came in, but I think the
22 possibility is that there are a number of firms who
23 could on a raw materials or allied products basis and
24 so on and they are not finding it particularly to
25 their advantage to move in at the moment.

26 THE CHAIRMAN: When you refer to a chemical
27 firm moving in, do you mean into the drug industry as
28 such, or into the production of a particular drug?

29 DR. DIXON: In this particular instance I
30 would mean moving into the industry, but it would be



1 possible to move into a certain drug field. For
2 instance, a firm may enter just one particular product
3 in any number of industries. I think Dow once went
4 into the business of making suitcases because they
5 happened to have magnesium as a by-product, but I
6 was referring generally to a large entry.

7 MR. MACLEOD: Following up something that
8 was said by Commissioner Whiteley, I thought that
9 either you or Mr. Conder gave evidence that the
10 pattern in Canada was to some extent at least that of
11 small, regional firms, who did their whole business
12 in one particular area of Canada?

13 DR. DIXON: I think I made a sentence to
14 the effect that perhaps the significance of the smaller
15 firms was more in a competition sense than would be
16 indicated by their sales volume, because they operate
17 on a regional basis so that their national sales
18 volume would be insignificant in relation to the
19 national figure, but in their particular area it
20 was significant. In Quebec there are a number of
21 small drug firms who operate only in one city, and
22 offer very stiff competition just in that one city,
23 and I meant their competitive effect may well be
24 greater than the sales dollar may indicate.

25 MR. MACLEOD: I think there are some
26 statistics set out in the brief of the Association?

27 DR. DIXON: That is the only reference I
28 made in this particular respect, as far as I can
29 recall.
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THE CHAIRMAN: Mr. MacLeod?

MR. MACLEOD: Yes, sir. Now, when you read this brief before the Select Committee in Ontario, at the bottom of page 4 and before the table on page 5 you made an extemporaneous comment. I would like to ask you about it, if I may read that into the record. This occurs just at the bottom of page 4 after the footnote.

"I might add here that I believe it is significant, although these firms have the potential facilities and have been moving in, to some degree, there is no rush to get in in the sense of many of them pouring in in great numbers. They can enter; they have the facilities; some of them are entering. The fact that they are not, is to me at least, a qualitative indication of some of the other indications of competition in the industry. You would otherwise expect that, if you want, the industry were a fat goose ready to be plucked, because of monopolistic practices in the industry that there would be a rush of firms to enter, which has not been the case although some of them have been. In other words, the industry is held competitively as much by the possibility of entering of these large firms as it is by their actual entry, both of which have been in evidence".



1 Now, the only point I want to ask you on
2 that is this. You suggest that this was a fat goose to
3 be plucked, and yet firms are not ---

4 DR. DIXON: I didn't suggest; I said if it
5 were, one would expect these firms to be in a position -
6 if it were a fat goose I would expect to see a rush of
7 firms entering, because, as I see it, on the fringe of
8 the chemical industry and the brewing industry and the
9 food industry and a whole host of other industries, some
10 of them are coming in, but they are not coming in in
11 droves. Some of them are entering, but there is not a
12 rush, and I think it is significant, I think it indicates
13 that this isn't the rosy, the fat goose, if you will, and
14 I think this is borne out by some pretty independent ana-
15 lysts, investment counsellors, who are not exactly of late
16 recommending people into this industry as far as purcha-
17 sing of stock.

18 MR. MACLEOD: Would a situation in which the
19 patents for new and high-priced drugs were held by firms
20 in the industry and not available to new entrants have any
21 bearing here? Wouldn't it be a factor in dissuading
22 other firms coming in?

23 DR. DIXON: I think two things. One, there
24 is, as has been established - and this would be less of a
25 bother for a new firm - I think more significantly it
26 would seem that, studying the pattern in industry over the
27 last ten or fifteen years it is not, or it is entirely
28 possible, particularly with a firm with large resources
29 or reasonably large resources, to hope to bring out a
30 product which is similar in its therapeutic effects or



1 perhaps even better; and it seems to me that if gains were
2 of a significant nature and the likelihood of these gains
3 continuing were such that the question of patents wouldn't
4 stop them coming in, particularly where it can spread itself
5 in a number of lines where the product advantage is less
6 than some other firms. I don't think in this particular
case that this is really what is holding people back.

7 MR. MACLEOD: You think it is not the fact
8 in practice?

9 DR. DIXON: I don't think it is the case,
10 no. This is impossible to make a statement on. I don't
11 know. I am just deducing something. I don't think so.

12 MR. MACLEOD: If it were a fact, the
13 closely holding of patents would have a deterring
14 influence.

15 DR. DIXON: If it was a possibility of
16 putting in considerable gains, if that was not possible,
17 that might indicate it; and also to the extent that firms
18 were only manufacturing this one item or primarily manufac-
19 turing one item.

20 MR. HANSARD: I wonder if Mr. MacLeod would
21 tell us what is meant by a closely held patent.

22 MR. MACLEOD: The patent on Largactil, the
23 fact that no other manufacturer could obtain the rights
24 to manufacture this in Canada. One manufacturer is in the
25 process of obtaining it now.

26 MR. HANSARD: I am just questioning the
27 expression "closely held", because in my view a patent
28 starts out by being closely held, it goes to the inventor.

29 MR. MACLEOD: Yes, probably the words were
30



1 gratuitous in the sense that they were not required.

2 MR. HANSARD: Thank you.

3 THE CHAIRMAN: Mr. MacLeod, did you mean
4 a patent which is used by only one manufacturer as distinct
5 from one which had several licensees?

6 MR. MACLEOD: The "closely held" would be
7 necessary in the second situation. But there are certain
8 patents where one can obtain a licence easily; there are
9 other patents where it is extremely difficult, if not
10 impossible, to obtain.

11 MR. HANSARD: I think all patents are in
12 the same boat, and we all know that there are compulsory
13 licensing provisions.

14 MR. MACLEOD: The only point I was raising
15 with Professor Dixon was whether the existence of patents
16 on the profitable items in the trade and the unavailability
17 of patents to new entrants would be a factor to new
18 entrants.

19 MR. HANSARD: All I am questioning is
20 "availability", and I don't think that necessarily
21 follows.

22 DR. DIXON: Well, to me, I think this may
23 well be one of the significant spurs to get the industry
24 to do what we want it to do in terms of a consumer, that
25 there is a great pressure on a firm, either a new entrant
26 or an existing firm, if that situation exists, to come out
27 with something new and different, and this is what I want
28 as a consumer. This is the most important thing I want
29 from the industry, the improvement in the performance of
30 the product.



1 MR. MACLEOD: Now, you made, beginning on
2 page 10 of your brief, some analyses of profits, and
3 those were, of course, of Canadian firms.

4 DR. DIXON: Yes. Well, they were taken
5 out of the income tax statistics where all firms in the
6 industry had paid income tax or not even paid income tax
7 but filed a return. Presumably this includes foreign
8 firms as well.

9 MR. MACLEOD: Now, at pages 14 and 15 you
10 make some comment on the necessity of high returns because
11 of the high risk in this industry and the high expenses in
12 connection with research. Is that the position you take?

13 DR. DIXON: I think that probably more
14 properly I would say the possibility of high return.

15 MR. MACLEOD: Are necessary to make the
16 firms run the risks involved?

17 DR. DIXON: Yes, the possibility of it.
18 As I say, this may not be the case. As I say, I am
19 making an extemporaneous comment.

20 MR. MACLEOD: Isn't it the fact that the
21 situation is that you are talking about the profits in
22 Canada and the research is almost entirely carried out in
23 foreign countries. So what is the point of having
24 research in Canada?

25 DR. DIXON: Paying for it. Although we may
26 like to think of it as a subsidiary in Canada, it isn't,
27 it is not a national company, and presumably they are
28 looking for a return wherever they get it. I think it is
29 simpler if you look at some companies where they operate
30 not as a subsidiary in Canada, where they operate merely



1 as a branch, and in these cases funds flow back and forth,
2 and it is a question of maximizing the total net profit
3 from all its operations. I presume this would mean -
4 obviously the money is going one way or another, and, of
5 course, this gets us into the problem of a subsidiary.
6 If I am a subsidiary I can bring it back by charging a
7 high cost of goods, I can bring it by charging a lot of
8 money and bringing back a lot of profits. But the possi-
9 bility is looked for and you hope to pay for what the
10 firm is doing or has done.

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11 MR. MACLEOD: Are you suggesting that if we
12 didn't allow these companies high profits in Canada we
13 wouldn't obtain their products?

14 DR. DIXON: Well, I think the preface to
15 this is, first of all, I am not sure that I would want to
16 use the word "high" in any sense in which some people
17 might. The only relevance, as I try to see it here, of
18 profits being high in my concern is that there is or
19 there is not competition in the industry, and if there is
20 competition in the industry the profits are not high, by
21 my definition.

22 MR. MACLEOD: But you say it is desirable
23 that there be a high rate of return to attract companies
24 into this field in Canada because of the risks involved
25 and the cost of research.

26 DR. DIXON: There is a desire of the possi-
27 bility for firms, if they strike something good - we are
28 talking about something that the market warrants - that
29 there is a possibility of making a high return.

30 MR. MACLEOD: I don't understand how you



1 relate that to research carried on in other countries,
2 that we should strive for a high rate of return in Canada.

3 DR. DIXON: I didn't say we should strive.

4 All I say is that the industry is competitive, and if it
5 is an innovational industry, that the firms coming in
6 should see a possibility of striking it rich. I think
7 the issue of foreign versus national is specious. I
8 think this is part of the trouble; it shouldn't be
9 nationalistic. Capital is capital. If it looks like a
10 good idea it is going to come here, and if it doesn't look
11 like a good idea it will not come here, and I would say
12 that this presumably would indicate a profitable thing.
13 At the moment it seems to be in a sort of hiatus or there
14 doesn't seem to be a tremendous amount moving in or a
15 tremendous amount moving out. But the fact that a subsi-
16 diary is located in Canada as opposed to southern
17 Louisiana or Puerto Rico is irrelevant.

18 MR. MACLEOD: Why?

19 DR. DIXON: Because the company is
20 concerned in making a return on its investment. If it
21 decides it is better to put it in Canada as distinct from
22 the United States, then presumably they do it because of
23 a greater return.

24 MR. MACLEOD: This is a very touchy
25 subject, as the Commission knows, and I am not suggesting
26 for a moment that there is no research carried on in
27 Canada, but by and large the recent tranquilizers and
28 antibiotics have all been discovered in foreign countries.

29 DR. DIXON: To my mind it is completely
30 irrelevant. It is just the same as if I have two plants,



1 looking at all the research that goes on at General Motors,
2 and as far as that company is concerned, their Canadian
3 subsidiary is just another plant, and if it is not effi-
4 cient to do it there it is not efficient to do it there.

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1 MR. MACLEOD: But it is important for us to
2 give an incentive to the Canadian subsidiary to have
3 the parent company carry on a subsidiary somewhere?

4 DR. DIXON: I would think yes. We are
5 concerned with the firm -- we are concerned with a
6 pressure such as the firm continues to produce more
7 efficiently, and in this industry that it is producing
8 better products, and then you have to spend more
9 money on research, but I think the issue of a national
10 boundary is really not relevant.

11 MR. WHITELEY: You would not deny it may be
12 relevant in other aspects of our national life?

13 DR. DIXON: No, I am not prepared to say that.

14 MR. WHITELEY: Do you think it is immaterial
15 whether we have research in Canada or not?

16 DR. DIXON: No, I didn't say this, but I
17 think we can get too concerned about the label on
18 capital. We might be better off having the research
19 done somewhere else. I think a lot of research can
20 be done efficiently here.

21 MR. WHITELEY: Do you think efficiency is the
22 only thing?

23 DR. DIXON: I think so.

24 THE CHAIRMAN: You are speaking as an
25 economist?

26 DR. DIXON: Yes, I am speaking only as an
27 economist.

28 MR. WHITELEY: But I don't think an economist
29 is quite as limited as you suggest.

30 DR. DIXON: Also privately: I have certain



1 opinions on free trade areas and movement of capital
2 and people, but I would not wish to comment on it now.

3 MR. MACLEOD: A great deal of your discussion
4 on the points you make would relate to that situation
5 when you speak of high profit being the spirit of
6 research and bringing new entrants into the field,
7 that, of course, would happen on an international
8 scale?

9 DR. DIXON: This might happen in one place
10 and not in another from time to time, and the capital
11 may move around, although I think it an obvious
12 tendency once there is a large enough market it will
13 become more efficient for them to locate their
14 operations within the market area, and the larger
15 that area grows they will tend to expand more and more
16 on their operations. In the case of the industry now
17 there are some firms because of particular circumstances
18 -- I am talking of subsidiary companies; obviously
19 the Canadian owned companies are in a different
20 situation -- but some of them do a considerable amount
21 of research here because of circumstances. I think
22 you will find a number of them do more. One simple
23 reason, of course, is probably I would think, by and
24 large, it does not cost as much to do it -- in some
25 instances once you get beyond a certain scale. Below
26 a certain scale it costs a great deal. It is very
27 hard to finance research on a sales volume of
28 \$1 million a year. You can't buy very many people
29 on that basis.

30 MR. MACLEOD: One small point on page 38:



1 toward the bottom of the page there are certain
2 percentages set out: "Assuming an industry markup
3 from manufacturer to consumer price of about
4 40 per cent on retail, and assuming a drop in profit
5 as a percentage of the sales dollar from the average
6 actual performance of 6.3 to the all manufacturing
7 average of 3.8, this change would result on each dollar
8 of retail selling price in a reduction of 1.35 per cent
9 on the retail level even provided that everything
10 else remained equal.

11 MR. HUME: I think that was corrected to
12 1.5. It is a matter of mathematical miscalculation.

13 THE CHAIRMAN: It looked to me as if the
14 mathematics should be 2.5 rather than 1.5. That is
15 what is puzzling us.

16 MR. HUME: It was corrected to 1.5, and
17 perhaps should have been 2.5.

18 DR. DIXON: 3.8 to 6.3 is 2.5 in total on
19 the manufacturers, but on the retail selling price
20 with the markup going on there, this will not result
21 in the same decrease. I worked through a couple of
22 examples which I don't have with me, which indicated
23 it will drop. It is not an increase in price or
24 decrease in $2\frac{1}{2}$ per cent of return to any manufacturing;
25 it will be less than that. The retail margin is
26 still the percentage of the buying price to the retail
27 price.

28 MR. HUME: Before the Ontario Inquiry, am
29 I not correct your notes indicated that you indicated
30 that figure should have been 1.5, having made whatever
calculations you had with you at that time?



1 DR. DIXON: Yes.

2 MR. HUME: That may still be an error, doctor,
3 and perhaps you may be good enough to look at that again.

4 THE CHAIRMAN: If everything else remained
5 equal, it would seem to me that the manufacturers
6 selling price would go down, because if everything else
7 remains equal ---

8 DR. DIXON: I wasn't meaning that everything
9 would remain equal. I was referring to the state
10 of conditions in the industry, which I don't think
11 would remain equal.

12 THE CHAIRMAN: Perhaps you could come back to
13 that later.

14 DR. DIXON: Yes.

15 THE CHAIRMAN: On the face of it, I am
16 puzzled as to why it should be 1.5 instead of 2.5.

17 DR. DIXON: I will work an example of it, yes.

18 MR. MACLEOD: I think that is all I have, sir.

19 MR. FRAWLEY: I have no questions, sir.

20 MR. HANSARD: I have no questions.

21 DR. DIXON: Could I perhaps just do this
22 privately to you rather than now, and make an
23 explanation of it?

24 THE CHAIRMAN: Except that this is on the
25 record, and it may be as well to have the information
26 on the record. On the basis of everything remaining
27 equal, I reach 2.50 instead of 1.50.

28 DR. DIXON: May I step down and work it out?

29 MR. HUME: I have no re-examination -- unless
30 the Commission has any questions of Dr. Dixon.



1 MR. WHITELEY: Perhaps one question I may
2 put to Dr. Dixon in view of his reference to
3 efficiency. Do you consider that research should
4 be conducted purely on a question of efficiency and
5 therefore might not be conducted in Canada at all?
6 Do you apply that same criterion to the manufacturing
7 in Canada?

8 DR. DIXON: From the point of view of the
9 consumer, if something costs much more at the
10 manufacturers -- yes, I do. I think certainly if we
11 happen to be able to make newsprint for an hour's
12 labour in the advantage structure, and that we would
13 be better off to get somebody else to do it, I think
14 we should. It is costing us a great deal of real
15 income.

16 MR. WHITELEY: I notice in your submission
17 there is no reference at all to the tariff?

18 DR. DIXON: I think here one has to try and
19 analyze whether in fact -- the only valid argument,
20 presumably, on the basis that there are only two
21 arguments generally accepted in the case of tariffs --
22 generally accepted by economists -- and one is the
23 inter-industry argument and the other is the defence
24 or national security argument, and there is perhaps
25 an argument here that these apply to some extent.
26 The existence of a tariff can obviously operate to
27 insulate an industry. I think in this particular
28 industry there are enough firms that it tends to be
29 a rather minimal effect, much less so than some
30 others, but it obviously does have an insulating effect



1 in the sense it exists as an inward movement. The
2 only point I observed in this was that there was
3 still some export -- not much, but some export from
4 the Canadian industry to other countries, European
5 included, which would give some measure, at least --
6 obviously, unless we have a very accurate breakdown
7 you can't tell too much by this.

8 THE CHAIRMAN: That seems to conclude the
9 examination, apart from the one point.
10 ---The witness stands down.

11 MR. HUME: Mr. Chairman, as I indicated
12 at the hearings in Toronto, the Association have been
13 requested by the Select Committee of the Ontario
14 Legislature to conduct a survey, the questions of
15 which were worked out between Mr. A.J. Little, of
16 the Clarkson Company in Toronto, a chartered accountant
17 of Toronto, and the chartered accountant or advisor
18 to the committee to cover certain areas in which that
19 committee was concerned, and I think it is important
20 for the record to say that was an inquiry by the
21 Ontario Legislature that was not limited in any way
22 as is our inquiry under the statute, and was a fairly
23 general inquiry for the purpose of examining the
24 cost and the methods of storing, the methods of
25 inventory and so on, pharmaceutical products in
26 government institutions.

27 We got into the area of how the companies
28 carried on, and at the request of that committee
29 this statement dated October the 24th, a copy of
30 which was sent to you recently -- and Mr. MacLeod



1 tells me he has a copy -- this statement of October
2 the 24th 1961 was prepared by Mr. Little, and, as
3 we said in Toronto at that time, now that this has
4 been presented to that committee -- and Mr. Little
5 has given some evidence with respect to it -- it is
6 submitted to you for whatever use and assistance it
7 may have.



McH/dpw

1 This exhibit or document is not presented
2 to prove anything, we were not trying to make any point
3 about it. This is merely a compilation of facts which
4 is in these schedules, a total of seven pages and I think
5 the only useful thing I might add to the document in pre-
6 senting it to you for your use is to indicate Mr. Little
7 stated to the Committee in his evidence after he was
8 qualified that these 40 companies represent a substantial
9 portion of the industry because in the context of whether
10 this represented 5% or 95% and had some bearing, Mr.
11 Little said the following:

12 "At the time of preparing the questionnaire
13 I was advised there were 54 members of the
14 Canadian Pharmaceutical Manufacturers'
15 Association. Six of those companies were
16 not distributing pharmaceuticals to the
17 trade, but were suppliers and were compa-
18 nies who under the present rules and
19 regulations wouldn't have been eligible
20 for membership in the Association for that
21 reason, but having been members for many
22 years were allowed to remain. So six
23 companies were excluded from the question-
24 naire at the start, which left 48 possible
25 companies for inclusion. Of the 48 six
26 chose not to participate. One which was
27 expected to reply did not reply. One
28 replied after the bulk of the summarizing
29 of the figures had been completed and we
30 felt the expense of going back and



reworking our figures was not worthwhile. It was a very small company in the total picture. That left 40 companies that actually participated in the questionnaire. The eight companies that didn't take part, we, of course, had no figures from them, but it was possible for the Association to indicate to us the estimated sales volume of such companies because their fee for participation in the Association is based on volume. We took the range of sales figures of the eight companies and totalled them up and found that the aggregate sales would probably fall in the range of three million eight, to five million two hundred and fifty or something in the neighbourhood of three to five per cent of the total volume of sales of the members of the Association.

I also thought your Committee would be interested to see what percentage of the total pharmaceutical industry might be represented by these companies if it was possible to work some appropriate figure. From the Dominion Bureau of Statistics' summaries of the medicinal and pharmaceutical preparations industry for 1959 on table 3 would appear to be a corresponding total sales volume of comparable products for 1959, which is the most recent year,



and that figure amounted to 116,938,000 to the nearest thousand. The 1959 sales for the 40 companies included in these results amounted to 106,000,258, slightly lower than the 1960 result which appeared on my first schedule. The 1959 sales of the 40 companies which is included represent about 91% of the total sales for Canada in 1959 and that would appear to be comparable...."

So Mr. Little has indicated to the Committee that under the system which they used it was purely a system of anonymous submission of material with the results that appear in this. I again emphasize this is not submitted to make a point or prove anything, it is purely for information. It would appear on that basis, these being the 1960 figures, this represents about 90% of the pharmaceutical industry.

THE CHAIRMAN: Is this for the industry as a whole or members of the Association?

MR. HUME: 90% of the industry as a whole. Mr. Little took the figures of the entire industry for 1959, compared them with the 40 companies for 1959 - these are 1960 but he had the 1959 figures as well and indicates that he had worked out the figures in these and this statement represents about 90% of the total Canadian pharmaceutical industry. It is a guestimate because as this schedule indicates there are some veterinary pharmaceuticals in there and the figures are such that it is impossible to break these out but among certain areas



1 within a few percentage points, they are correct.

2 I am not competent to answer certain
3 questions but I have listened to Mr. Little's explanation
4 and if there are any questions as a result of having his
5 document I will do my best to answer them and if I cannot
6 answer them I will find out from Mr. Little and send them
7 by mail. I think they are fairly self-explanatory. I
8 know the Commission has available the evidence that Mr.
9 Little gave in Volume 28 of the Select Committee hearings
10 so that possibly if you read through that if there are
11 some unanswered questions if you will communicate with me
12 I will do by best to supply whatever the answers are.

13 MR. WHITELEY: This document may perhaps
14 be relevant to the point you raised in Toronto in commen-
15 ting on the use made by the Canadian Association of
16 Consumers of certain data set out in paragraph 189 of the
17 Green Book. You may recall that - this is at page 115.

18 MR. HUME: Yes, on the sales promotion
19 material.

20 MR. WHITELEY: You recall at the hearing
21 in Toronto you referred to a figure of 6.5% and I indi-
22 cated that I did not think that was entirely comparable
23 with the data set out in paragraph 189. You will notice
24 in paragraph 189 the statement is made:

25 "The average for all the firms from which
26 information on this point was obtained was almost
27 precisely 25% (actually 24.93%)".

28 I notice from Schedule 3 of the document
29 to which you have just been referring that Item 5, selling
30 and advertising, it is 29.2% which is somewhat higher



1 than the average shown in the Green Book.

2 MR. HUME: Well, that depends on which
3 average you look at. If you look at 189, if you take two
4 firms out they quote a figure of 33.38%. I do not know
5 which two firms are included.

6 MR. WHITELEY: No, or what that relates to.
7 Perhaps Mr. MacLeod might indicate that. Mr. MacLeod,
8 can you tell the Commission whether that figure of 33.38%
9 relates to cost of goods or selling and promotional
10 expenses.

11 MR. MACLEOD: 36.21?

12 MR. WHITELEY: No, 33.38.

13 MR. MACLEOD: 33.38 would relate to cost
14 of goods sold.

15 MR. WHITELEY: So from that point of view
16 the 33.38 is not in reference to the cost of selling and
17 promotion?

18 MR. MACLEOD: No, the cost of selling and
19 promotion was settled first and then it was suggested
20 that a comparison of it with the cost of goods sold might
21 be of some significance.

22 MR. WHITELEY: The 29.2% as shown in the
23 document from the Ontario hearing is a higher figure than
24 shown ---

25 MR. HUME: Is Mr. MacLeod misreading that
26 sentence:

27 "If two firms which, because of the nature
28 of their operation, have relatively high
29 costs of goods sold, are taken out, the
30 average for the remaining 22 firms is



1 33.38%".

2 Surely that is a comparable figure to the
3 29.93%?

4 THE CHAIRMAN: You have to read the
5 previous sentence too.

6 MR. HUME: "The percentage given above is
7 for 27 firms. It was possible to calculate the cost of
8 goods sold for 24 of these and the average for these
9 showed cost of goods sold as 36.21% of net sales".

10 I was directing my attention to the 33.38%
11 in the third line and I want to be clear about this,
12 that is a comparable figure to the 24.93 - one being for
13 the ---

14 MR. MACLEOD: I think you are incorrect,
15 the comparable figures are first 25%, that relates to
16 advertising and promotion and the significance of this
17 percentage, if it is compared with the report of cost of
18 goods sold and the estimates, the percentages are for
19 cost of goods sold.

20 MR. HUME: Then, to answer you question
21 it would appear that the 25% on the firms selected is
22 lower than the percentage of the 40 firms, therefore, if
23 Mr. MacLeod can indicate how many firms make up that 25%,
24 it may be somewhere in the 20's, in which case the figure
25 is really higher. At the time of my cross-examination of
26 Mrs. Plumptre and at the time I was mentioning this in
27 Toronto I had not seen this document of October 24th.
28 This only came to my attention on the weekend following
29 your hearings although this figure was available I had
30 not seen it. I think Mr. Little made it quite clear that



1 this figure represents the selling and advertising costs
2 of the 40 companies representing roughly 90% of the
3 industry and would be a more representative figure than
4 the one in the Green Book.

5 MR. MACLEOD: The 25% is based on 27 firms,
6 they are listed on pages 100 and 107 and the percentages
7 relating to each are set out on pages 108, 109 and 110.

8 MR. HUME: Do you know what percentage of
9 the total market the 27 firms represent? I suppose that
10 is academic.

11 MR. MACLEOD: I think actually we took
12 most of the large firms as will appear from the names
13 listed but included several small ones to get the balance.
14 We did not attempt to canvass the whole industry.

15 MR. HUME: To that extent this figure I
16 think represents a better figure in the sense it repre-
17 sents the average of a greater number of companies.

18 MR. WHITELEY: That is what I suggested
19 when the larger number of companies' figures were compiled
20 it might indicate the relationship to the figure.

21 MR. HUME: You are quite right and I was
22 not aware of this figure at the time I was discussing it.

23 THE CHAIRMAN: Is there anything further?

24 MR. HUME: No, unless there is any question
25 that anyone would like to ask because I will answer within
26 the limitations that I indicated. We want to be of as
27 much assistance as we can and Mr. Little has quite a bit
28 to say about it. I think it is fairly self-explanatory
29 and he was dealing with a legislative committee and here
30 we are dealing with the Commission and you gentlemen are



1 more accustomed to understanding and reviewing these
2 things and I do not think it is necessary for me to go
3 through this evidence.

4 THE CHAIRMAN: I have not had an opportunity
5 to study this.

6 MR. WHITELEY: There is another point I
7 might mention, reference to page 147 in the Green Book,
8 and I notice there in the middle of the page it says:

9 "The total net sales of the 28 firms were
10 \$104,000,000 ---"

11 Of course, that is not the same year as
12 the 1960 figures in the statement presented this morning
13 but it should be some indication.

14 MR. HUME: I think Mr. Little indicated
15 that the 1959 figures were comparable to the 1960.

16 MR. WHITELEY: As to the total sales.
17 However, it indicates quite substantial coverage.

18 MR. FRAWLEY: Mr. Chairman, you may recall
19 that at the Toronto sittings an exhibit number was allo-
20 cated to a statement of drug prices in Alberta that I
21 had wished to file and I asked leave to file it later.
22 I now have that and would like to file it.

23 MR. HUME: Are we going to give this state-
24 ment an exhibit number? Perhaps to be in sequence, I
25 made the suggestion in Toronto and perhaps I could do it
26 again. They marked it as an exhibit and you must realize
27 that Mr. Frawley reading this in Ottawa would not know
28 what we were talking about. The Chairman in that case
29 directed it to be taken as read and Mr. Frawley was able
30 to call me from Ottawa and indicate he had it in front of



1 him. I wonder if the same thing might not be done here
2 if it is of any use to have it taken so people reading
3 these proceedings at any other place would be able to
4 appreciate the figures if the figures are of any use.
5 I make no motion for this, I just indicate this.

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1 THE CHAIRMAN: I see no objection to it.
2 Your submission is that it might be included in the
3 transcript?

4 MR. HUME: I am only thinking of others who
5 are not here and haven't it in their hands.

6 THE CHAIRMAN: I think the Commission sees
7 no objection to it. If people are obtaining copies
8 of the transcript it might be more readily available
9 to them in that way.

10 MR. HUME: Perhaps that might be taken as
11 read?

12 THE CHAIRMAN: We will take it as read
13 and have it written into the transcript. I will mark
14 the statement which Mr. Frawley has just handed in,
15 which is Exhibit T-5.

16 ---EXHIBIT NO. T-5: Statement Showing Drug Prices
17 in Alberta.
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Page 2

DRUG PRICES IN ALBERTA

ANTIBIOTICS

1	2	3	4	5	6	7	8	9	10
Generic Name	Brand Name	Manufacturer's Cost	List Price	Price to Retail Pharmacist	Price to Whole-saler	Price to University Hospital Edmonton	Starkman Price by Generic Name to Physician	Gilbert Price by Generic Name	Empire Price by Generic Name to Physician
Erythromycin 250 mg.	Erythrocin Abbott Posone Lilly	\$4.96-\$5.02/100 G.B. 177	\$47.70/100 \$47.70/100	\$31.80/100 \$28.62/100	\$27.03/100 \$24.33/100	\$20.61/100 H.P.			
Novobiocin 250 mg.	Albamycin Upjohn Cathomycin Merck	\$14.64/100 \$ 6.91/100 G.B. 181	\$60.45/100 \$60.45/100	\$36.27/100 \$36.27/100	\$30.83/100 \$30.83/100	\$27.13/100 H.P.			
	Albamycin T Upjohn		\$56.62/100	\$33.97/100	\$28.87/100	\$24.50/100 H.P.			
Tetracycline 250 mg.	Achromycin Lederle	\$644.15 Kg. G.B. 169 (1)	\$43.13/100	\$25.88/100	\$22.00/100	\$3.49/16 Bid: 20,000		\$18.00/100 (Physician) \$14.40/100 (Hospital and Retail Pharmacist)	\$9.80/32

(cont'd p. 3)



ANTIBIOTICS

1	2	3	4	5	6	7	8	9	10
Generic Name	Brand Name	Manufacturer's Cost	List Price	Price to Retail Pharmacist	Price to Wholesaler	Price to University Hospital Edmonton	Starkman Price by Generic Name to Physician	Gilbert Price by Generic Name	Empire Price by Generic Name to Physician
Tetracycline 250 mg. (cont'd)	Cosac Tetracyclin Pfizer	\$156.71 - \$525.36 Kg. G.B. 169 (I)	\$47.84/100	\$28.73/100	\$23.94/100	\$16.50/100 Big; 20,000 lot			
	Tetrex Bristol	\$140.00 Kg. G.B. 169 (I)	\$47.84/100	\$28.73/100	\$24.42/100	\$14.95/100 Bid; 20,000 lot			
	Muracine Nadeau	N.A.	\$32.00/100	\$19.20/100	\$17.28/100	\$2.00/16 (\$12.50/100) Bid; 20,000 lot			
Chlorotetracycline 250 mg.	Aureomycin Lederle	\$476.51 K.G.	\$43.13/100	\$25.88/100	\$22.00/100	\$19.18/100 H.P.			
Chloramphenicol 250 mg.	Chloromycetin Parke, Davis Enicol Intra	\$90.00 Kg. G.B. 168	\$39.40/100	\$23.60/100	N.A.	\$12.48/100 H.P.	\$9.95/100 \$86.00/1000	\$12.50/100 (Physician) \$10.00/100 (Hospital and Retail Pharmacist)	\$19.60/100

FOOTNOTES: H.P. - Prices listed in Manufacturer's published prices to hospitals.

(1) - See also chart reproduced at page 23 of Réseaux Committee Report of May 8, 1961.



CORTICOSTEROIDS

1	2	3	4	5	6	7	8	9	10
Generic Name	Brand Name	Manufacturer's Cost	List Price 100's	Price to Retail Pharmacist 100's	Price to Wholesale 100's	Price to University Hospital Edmonton 100's	Starkman Price to Physician by Generic Name	Gilbert Price by Generic Name	Empire Price to Physician
Prednisone 5 mg.	Meticorten Schering Delta-Cortef Upjohn Paracort Parke, Davis	See Explanatory Note	\$22.70 \$7.10/30 \$13.75	\$13.62 \$4.26 \$8.25	\$11.35 \$3.83 N.A.	\$1.62 Bid \$2.25 Bid	\$3.00/100 \$14.00/500 \$26.50/1000	\$5.00/100 (Physician) \$4.00/100 (Hospital and Retail Pharmacist)	\$7.20/100
Prednisolone 5 mg.	Meticortelone Schering Paracortol Park, Davis		\$22.70 \$13.75	\$13.62 \$ 8.25	\$11.35 N.A.	\$8.20/500 H.P.	\$ 3.95/100 \$18.50/500 \$22.50/1000	\$5.00/100 (Physician) \$4.00/100 (Hospital and Retail Pharmacist)	
Triamcinolone 4 mg.	Aristocort Lederle Kenacort Squibb		\$38.39 \$38.40	\$23.03 \$25.60	\$19.58 \$21.76	\$16.41 \$18.65			



CORTICOSTEROIDS

Generic Name	Brand Name	Manufacturer's Cost	List Price 100's	Price to Retail Pharmacist 100's	Price to Wholesaler 100's	Price to University Hospital 100's	Starkman Price to Physician by Generic Name	Gilbert Price by Generic Name	Empire Price to Physician
Dexamethasone 0.75 mg.	Decadron Merck		\$29.80	\$17.88	\$15.20	\$11.50			
	Deronil Schering		\$29.80	\$17.88	\$14.90	\$14.50			
Methylprednisolone	Medrol Upjohn		\$38.25	\$23.01	\$20.71	\$10.73			

FOOTNOTES

Column 3 - Manufacturer's Costs is left blank because the Statement of Material collected by the Director of Investigation and Research, Combines Investigation Act does not cover Corticosteroids.

The United States Senate Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary (the Kefauver Committee) fully investigated Corticosteroids and at page 17 of its Report of May 8, 1961 the following statement is made:

"On a per tablet basis, the consumer using either prednisone or prednisolone bearing the brand name of one of the major pharmaceutical firms will pay approximately 30 cents for a pill which is sold to the druggist for some 18 cents and which can be produced for 1.5 cents or less. An arthritic patient will frequently remain for long periods on a dosage of about 100 of the 5-milligram tablets a month; thus he pays \$30 a month for his medicine, for which his druggist paid around \$18 but which cost around \$1.50 to produce."



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TRANQUILLIZERS

1	2	3	4	5	6	7	8	9	10	11
Generic Name	Brand Name	Manufacturer's Cost	List Price	Price to Retail Pharmacist	Price to Wholesale	Price to University Hospital Edmonton	Starkman Price to Physician by Generic Name	Gilbert Price by Generic Name	Empire Price by Generic Name	Price to Prov. Mental Institutions by Generic Name
Chlorpromazine 25 mg.	Largactil Poulenc	\$53.00/ Kg. or \$0.133/ 100 G.B. 186	\$8.90/ 100	\$5.34/100	\$4.54/100	\$5.53/100 50 mg.	\$22.00/1000	\$2.50/100 (Physician) \$2.00/100 (Hospital and Retailer)	\$4.40/100 100	\$18.00/1000 100,000 lots
Promazine 25 mg.	Sparine Wyeth Intrazine Intra Pro-Tran Mowatt & Moore	\$0.0950/ 100 " " G.B. 198	\$5.25/ 50 \$3.55/ 50 \$4.75/ 50	\$4.37/100	\$3.71/100	\$3.54/100 \$1.55/100 \$0.86/100	\$6.25/1000			\$12.10/1000 50 mg.
Perphenazine 2 mg.	Trilafon Schering	\$5.10/ 1000 G.B. 194	\$8.60/ 100 \$4.30/ 50 \$37.90/ 500	\$5.16/100	\$4.30/100	\$3.39/100 H.P.				\$41.20/1000 8 mg. \$58.00/1000 10 mg.
Trifluoperazine 1 mg.	Stelazine SKF	\$1.15/1000 G.B. 201	\$4.75/50	\$2.85/50	\$2.42/50	\$2.94/100 5000's				\$54.00/1000 5 mg. 25,000 lots



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TRANQUILLIZERS

1	2	3	4	5	6	7	8	9	10	11
Generic Name	Brand Name	Manufacturer's Cost	List Price	Price to Retail Pharmacist	Price to Whole-saler	Price to University Hospital Edmonton	Starkman Price to Physician by Generic Name	Gilbert Price by Generic Name	Empire Price by Generic Name	Price to Prov. Mental Institutions by Generic Name
Hydroxylone 10 mg.	Atarax Pfizer	\$0.43/100 G.B. 190	\$6.16/100	\$3.70/100	\$3.08/100	\$3.10/100				
Trany-cypromine	Parnate SKF	N.A.	\$4.25/50	\$2.55/100	\$2.17/100	\$3.70/100 1000's				\$37.00/1000
Thioridazine 100 mg.	Mellaril Sandoz	\$33.40/1000 G.B. 201	\$12.50/50	\$7.50/50	\$6.39/50	\$9.01/100				\$65.80/1000 100 mg. \$32.00/1000 25 mg.
Triflu-promazine HCL 25 mg.	Vesprin Squibb	\$11.39/1000 G.B. 201	\$6.75/50	\$4.05/50	\$3.44/50	\$4.41/100 10 mg.				\$41.00/1000 25 mg.
Phenelzine Dihydrogen Sulphate 15 mg.	Nardil Warner Chilcott	N.A.	\$8.00/100 \$32.00/500 \$80.00/1000	\$4.80/100 \$48.00/1000	\$4.08/100 \$40.80/1000	\$6.40/100				\$31.00/1000 15 mg.



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TRANQUILLIZERS

1	2	3	4	5	6	7	8	9	10	11
Generic Name	Brand Name	Manufacturer's Cost	List Price	Price to Retail Pharmacist	Price to Whole-saler	Price to University Hospital Edmonton	Starkman Price to Physician by Generic Name	Gilbert Price by Generic Name	Empire Price by Generic Name	Price to Prov. Mental Institutions by Generic Name
Meproamate 400 mg.	Equanil Wyeth	\$0.18/50	\$5.00/50 \$43.75/500 \$85.00/1000	\$26.25/500 \$51.00/1000	\$22.31/500 \$43.35/1000	\$3.24/100 10,000 lots	\$9.75/1000	\$1.35/100 (Physician) \$1.08/100 (Hospital and Retail Pharmacist)	\$1.80/100	\$34.12/1000 400 mg.
Impramine Hydrochloride 25 mg. tablets	Tofranil Geigy	N.A.	\$12.60/100	\$7.56/100	\$6.43/100	\$5.67/100 5000 lot				\$44.59/1000 Ampoules or 25 mg. tablets



1 MR. MACLEOD: I referred this morning in
2 discussing with my friend Mr. Hansard to a recent
3 decision of the Commissioner of Patents with respect
4 to a compulsory license. I have a copy of that.
5 It has no particular significance, because if it has
6 not come out yet it will be out very shortly in the
7 Canadian Patent Reporter, but as a matter of
8 convenience the Commission might like to have it, or
9 possibly it would be correct for me to read the
10 title into the record?

11 THE CHAIRMAN: I was going to suggest that
12 you read the title. If it is not too long, you can
13 read it all. Is it fairly lengthy?

14 MR. FRAWLEY: It could be deemed to be
15 read, and put in.

16 THE CHAIRMAN: There is the question as to
17 whether there will be any discussion about it here.

18 MR. MACLEOD: It is a little more than
19 four pages, on double spacing.

20 MR. HUME: If Dr. Dixon could make his
21 short statement this could mean then, I surmise,
22 that he would then be through, and if it be permitted
23 he would like to get back to his home. We could
24 perhaps leave this until after lunch and let Dr. Dixon
25 get away.

26 DR DIXON: My communications system
27 obviously broke down. I was thinking in terms of
28 two figures, one of which was a reduction of 1.5 per
29 cent of the manufacturer's price. You are right,
30 the percentage is 2.5. I don't think it makes any



1 material difference to the comments which follow,
2 which was the sole reason for its inclusion at the time.

3 MR. GARIGAN: Except that the reason behind
4 the whole sentence falls too. You seem to imply
5 that the reduction at the manufacturer's level is
6 followed by a reduction at the retail level, and 2.5
7 is exactly the difference between 6.3 and 3.8.

8 DR. DIXON: It was given that impression
9 because it was a mistake -- all I was indicating was,
10 one, there was going to be a reduction; two, it was
11 going to be relatively small; and three, I was
12 pointing out what was going to happen. I don't
13 think there is on the basis of which I argued for
14 it dropping to the level of all manufacturing. The
15 sentence itself is really a lead into the sentences
16 which follow. I was not trying to communicate that
17 impression.

18 THE CHAIRMAN: If there are no other questions
19 arising out of this matter we thank you for your
20 attendance and information Dr. Dixon.

21 MR. MAGLEND: Is there any decision on the
22 order this afternoon? I raise the question because
23 I believe Mr. Wahn of Toronto was speaking to you.
24 He asked me to call him today if there was any
25 possibility of it being later today.

26 MR. EYME: I would appreciate the opportunity
27 of going first if I could, so that I could meet a
28 commitment tomorrow in Toronto, and if this is
29 convenient to all parties I would like to indicate
30 to the Commission that I don't think I will be of very



1 much help beyond three-quarters of an hour, and I
2 think certainly an hour would complete any summation
3 I might have.

4 MR. HANSARD: The only comment I have is
5 that I think the counsel for the Director should
6 speak first, but I think that if Mr. Hume for special
7 reasons goes first it should not alter what I
8 think is the usual procedure before this Commission
9 of the Director telling us what he has to say about
10 his Green Book and the evidence that has been brought
11 forward. It seems to me that that is the logic of
12 it, and I would urge that Mr. MacLeod go then.

13 THE CHAIRMAN: That is the usual procedure,
14 that the counsel or representative of the Director
15 usually speaks first in argument, then counsel or
16 representatives for any or all other parties
17 concerned speak, and then the Director has the right
18 of reply. That is from the point of view of trying
19 to get some order and some finality to it. We don't
20 insist that nobody ever speak again, but we think we
21 will perhaps have a little more expedition about it
22 if we do it that way. Have you any idea how long
23 you will be in your major presentation, Mr. MacLeod?

24 MR. MACLEOD: No, I don't think I have
25 a major presentation on opening. I will make comments
26 on the statement, but I generally rely on it in its
27 present form.

28 THE CHAIRMAN: How long do you think you will
29 take?

30 MR. MACLEOD: Perhaps half an hour.



1 MR. HUME I don't want to leave a false
2 impression. I can stay over, and would be quite happy
3 to stay and be here tomorrow morning.

4 THE CHAIRMAN: It would appear to be
5 unnecessary for you to say, yet you would be following
6 Mr. MacLeod and have a chance to answer what he says.

7 MR. HANSARD: May I recall to your mind,
8 Mr. Chairman, the situation that has developed in a
9 number of other matters before the Commission, where
10 the Director has said that he relies on the statement
11 of evidence in those cases. I think the situation
12 is different here. He is the one who is asserting,
13 and all I would like to remind the Commission is that
14 I think Mr. MacLeod ought to say everything he has
15 to say in chief, in chief, and be held in reply
16 strictly to reply. That is the ruling we have had
17 before.

18 THE CHAIRMAN: That is our practice. We are
19 not completely rigid, but we try to follow it.

20 We will adjourn until 2:00 this afternoon.

21
22 ---Luncheon adjournment.

23

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1 ---On resuming at 2:00 p.m.

2 THE CHAIRMAN: Mr. MacLeod?

3 MR. MACLEOD: Mr. Chairman and members of
4 the Commission, as I indicated, my intention, speaking
5 on behalf of the Director, is to rely largely on the
6 statement and make a few comments on matters which
7 arose during the inquiry only and not to attempt to
8 go over the evidence or anything like that.

9 Perhaps it is desirable to emphasize paragraph
10 4. The reasons for which the inquiry was started
11 of course, are set out in paragraph 2, but paragraph
12 4 relates to the scope of the inquiry, and it reads:

13 "The inquiry relates to the
14 sale and distribution of drugs
15 generally and information was
16 obtained about most aspects of
17 the drug industry. However, to
18 keep the inquiry within manageable
19 limits, detailed information about
20 costs, markups, selling prices and
21 similar aspects was obtained about two
22 general types of drugs only, the
23 antibiotic drugs and the tranquilizer
24 ataraxic."

25 These drugs were chosen for the reasons
26 mentioned in the paragraph, but the point I am
27 emphasizing is that the Commission will have before
28 it a body of information dealing with the drug
29 industry generally, and particularly on prices,
30 because prices were obtained in most instances by



1 obtaining the published price lists of the manufacturers;
2 and although in the case of the ataraxics and anti-
3 biotics we asked for more detailed information, we
4 got a certain amount of information about the whole
5 drug field.

6 Paragraph 7 touches on the information that
7 was obtained in a particular way.

8 Now, there was some suggestion at one stage
9 that the Director shouldn't split hairs, as it were,
10 about the term "manufacturers", but the reason that
11 the statement is prepared in the way it is is that
12 initially, at the very start, the manufacturers came
13 to us and they said: "We cannot answer your
14 questionnaires unless you tell us whether you are
15 talking about a basic drug, a semi-prepared dosage
16 form, a finished dosage form or the like," and the
17 questions phrased to them were accordingly in those
18 terms and their answers are in those terms.

19 Another point arising out of paragraph 7
20 which I wanted to mention was the extreme difficulty
21 of obtaining complete information about Canada. It
22 just can't be done, because the firms here are to
23 a very great extent subsidiaries, the larger firms,
24 the important firms in the industry are to a very
25 great extent subsidiaries, and they bring in their
26 products in a semi-manufactured form or, in some
27 cases, in a final manufactured form. So in a
28 very large area the industry in Canada is simply one
29 of distribution. There is a certain amount of
30 manufacturing goes on, very little in the basic drugs,



1 in the class referred to here, but you simply cannot
2 obtain a complete picture because the operations are
3 so inter-woven with operations of these firms and
4 the operations of firms in other countries. And
5 I say that for a particular reason, because on the
6 following page, in paragraph 11, information was
7 obtained from certain other sources, including the
8 transcript of the evidence before the Kefauver
9 Committee. Now, criticism has been directed at the
10 use of statements made before the Kefauver Committee,
11 but I would suggest that an inquiry of this kind,
12 which attempts to find out the broad conditions in
13 the industry and where the operations of the industry
14 are so inter-woven with those of other countries,
15 that it is legitimate to go to sources of information
16 in other countries. Inquiries in Britain would
17 be an example. It is not suggested that the findings
18 of the Kefauver Committee carry any weight; that
19 may or may not depend on the point of view of the
20 person considering them. But I am suggesting it
21 is perfectly legitimate for the Commission to take
22 the evidence of, say, the President of American
23 Cynamid, who appeared as a witness before the
24 Committee and was asked about certain things and
25 gave certain answers, and that is specific information
26 not affected, I suggest, by opinion and quite
27 legitimate to use.

28 Jumping back for a moment to paragraph 8,
29 it deals with the question of dates, and I think I
30 can safely say that care has been taken throughout



1 the statement to indicate the dates that are used
2 when the date is a matter of concern.

3 Chapter II I don't propose to go over in
4 any detail. It is more or less straight factual
5 information, at least until we come down to the
6 question of generics and brand names, and even here
7 I don't know whether there is very much I can usefully
8 say. I think the question will be fairly clear to
9 the Commission. There is perhaps one point I
10 might touch on. It has been suggested by many
11 witnesses that the matter of using brand names is
12 not of any significance because the chemical name
13 appears on the label anyway. Well, I suggest that
14 you can't have it both ways. If you are arguing
15 that the chemical name appears on the label for the
16 benefit of the doctors, you can't at the same time
17 turn around and say it is a great convenience for
18 the doctors to have these short made-up names, and
19 surely the purpose of pushing the brand name is
20 to have the brand name used on prescription and there
21 is no chemical name used at all.

22 Perhaps in touching on the chapter on
23 patents I might now refer to a judgment we were
24 discussing this morning.

25 MR. HANSARD: Is it a judgment?

26 MR. MACLEOD: It relates generally to the
27 question of patents, and more particularly to
28 compulsory licensing. Chapter IV starts on page
29 30. It is a judgment of the Patent Commissioner
30 Mr. Michel, who appeared as a witness before this



Commission. It is headed "In the matter of Canadian Patent No. 519,525 granted December 13, 1955 to Societe des Usines Chimiques Rhone-Poulenc and in the matter of an Application for a Licence under the Provisions of Section 41 (3) of the Patent Act, R.S.C. 1952, Chapter 203, between Micro Chemicals Limited, Applicant, and Societe des Usines Chimiques Rhone-Poulenc, Respondent. This is the beginning of the judgment.

"A hearing took place in my Office on May 29, and 30, 1961 to determine an application for licence made by Micro Chemicals Limited to manufacture under Canadian Patent No. 519,525, Phenthiazine Derivatives.

The patent was granted December 13, 1955 to Societe des Usines Chimiques Rhone-Poulenc on an invention made by Paul Charpentier. The invention concerns the manufacture of certain products having therapeutic value and comes under the provisions of Section 41 of the Patent Act. The claims of the patent cover a process of manufacturing Phenthiazine Derivatives and the product claims therein are restricted to products when made by the process claims. This is in accordance with Section 41 (1) which forbids claims to the produce per se



1 when they have medicinal value.

2 The applicant wishes to
3 manufacture the therapeutic product
4 by using the patented process.

5 Section 41 (3) of the Patent
6 Act reads:

7 'In the case of any patent for
8 an invention intended for or
9 capable of being used for the
10 preparation or production of
11 food or medicine, the Commissioner
12 shall, unless he sees good reason
13 to the contrary, grant to any
14 person applying for the same,
15 a licence limited to the use
16 of the invention for the
17 purposes of the preparation or
18 production of food or medicine
19 but not otherwise; and, in
20 settling the terms of such
21 licence and fixing the amount
22 of royalty or other consideration
23 payable the Commissioner shall
24 have regard to the desirability
25 of making the food or medicine
26 available to the public at the
27 lowest possible price consistent
28 with giving to the inventor due
29 reward for the research leading
30 to the invention.'



1 The wording of the section is
2 pretty strong. It says 'the
3 Commissioner shall, unless he sees
4 good reason to the contrary, grant
5 to any person applying for the
6 same, a licence-----'. The
7 Commissioner must therefore ascertain
8 the facts surrounding the application
9 including the hearing of the parties,
10 if he deems it necessary. This has
11 been done in this case.

12 The manufacturing facilities, the
13 organization and the stability of the
14 applicant's company have been challenged.
15 It has also been stated that the
16 purpose of the Act is not to encourage
17 new ventures and that the patentee
18 was alarmed for the guarantee of such
19 an important product.

20 I have considered all those things
21 in the light of the wording of the
22 section of the Patent Act and of the
23 previous cases under the same section.

24 I find that Micro Chemicals
25 Limited, although a small company at
26 the present time, is manufacturing
27 a limited number of pharmaceutical
28 products.

29 One of the main objections by
30 the patentee is what it calls the



1 doubtful stability and responsibility
2 of the applicant. This I think is
3 a very important point, but it should
4 not be applied too severely, because
5 then only the big organizations could
6 take advantage of the licensing
7 provisions of section 41 and no small
8 company would ever have a chance of
9 establishing a business legally under
10 the privileges provided by the Patent
11 Act.

12 The patentee, in addition, claims
13 that the public is not exploited under
14 the patent but on the contrary that
15 this invention has benefited the public
16 health. Section 41 (3) does not refer
17 to any misuse of a patent and there
18 is no question of non-manufacturing
19 or abuse of the patent.

20 I find that no good reasons have
21 been advanced by the patentee in this
22 case for the refusal of a licence and
23 I therefore order the grant of a
24 licence to the applicant to be
25 effective as of the date of this
26 decision. The licence shall be for
27 the manufacture in Canada of substances
28 made by the process claimed for the
29 purpose of the preparation of medicine
30 but not otherwise. The licensee shall



1 not be permitted to import any
2 substance made by the patented process.
3 The licence shall be non-exclusive.

4 Now coming to the question of
5 royalty, I find myself in the same usual
6 situation where very little information
7 has been supplied to me on which to
8 base a reasonable reward to the inventor
9 for the research leading to the invention.

10 I has been established that the
11 invention is patented in 40 to 50
12 countries and that Rhone-Poulenc has
13 granted licences at royalties ranging
14 from 5 to 10 per cent of the price of
15 the finished product, (tablets, I
16 understand). On that basis it has
17 been established that 1,000 tablets
18 of 25 mg. dosage would bring royalty of
19 \$8.00 which works out at a royalty of
20 \$320.00 per kilogram of the active
21 substance made by the patented process
22 and that Poulenc Limitee of Montreal
23 obtains the chlorpromazine for \$53.00
24 a kilo from a Canadian manufacturer
25 with whom it has a manufacturing
26 arrangement. It is very difficult for
27 me to understand the logic of a
28 \$320.00 royalty per kilogram on a
29 product which can be made and sold no
30 doubt at a reasonable profit, for



1 \$53.00 per kilo.

2 These figures appear to have been
3 arrived at on the basis of the
4 suggested retail prices for
5 prescriptions to the public and they
6 may not represent the actual picture
7 especially when dealing with large
8 sales to public institutions. However,
9 I still feel that even if they were
10 cut in half they would still be very
11 high. Furthermore the tender price
12 for different quantities of tablets of
13 varied dosage would affect the royalty
14 in every case.

15 On the other hand chlorpromazine
16 like many other very potent substances
17 must be administered in very restricted
18 doses. The result is that a small
19 quantity of the active substance goes
20 a long way. One kilogram of
21 chlorpromazine hydrochloride for
22 instance, put up in 25 mg. tablets will
23 produce 40,000 such tablets.

24 These facts must be kept in mind
25 when one considers the due reward to the
26 inventor for the research leading to
27 the invention. However in fixing the
28 reward to the inventor I am not so
29 concerned about the considerable sums
30 of money that go into the sponsoring,



1 advertising and promoting of the
2 sales of these new products.

3 The Act is not concerned with the
4 finished product, it applies to that
5 which is patented. I do not think I
6 should distort the meaning or purpose
7 of the Act by fixing a royalty on
8 things which are not within the scope
9 of the patent.

10 In view of the above considerations
11 I fix the royalty at 15 per cent of the
12 net selling price of the active product
13 in the crude form before tableting.

14 The parties should within 60 days
15 get together and arrive at the form
16 of the licence and submit it to me
17 for approval. If they fail to do so
18 within the above time limit, I shall
19 issue a licence myself.
20 Ottawa, this seventh day of September, 1961."



ry/dpw

1 I suggest that this judgment is of some
2 importance in perhaps two ways in connection with the
3 argumentative evidence which has been made before the
4 Commission on the granting of compulsory licences. Based
5 on the information available to him, it has been the
6 Director's conclusion that compulsory licensing has been
7 little resorted to and has been apparently considered
8 a matter of difficulty. It was suggested in the Ilsley
9 Commission Report, and by witnesses before this Commission,
10 that you cannot look at the picture of what compulsory
11 licences were granted because a lot of them may have been
12 granted privately and without appearing on the record.
13 That may be so, but the evidence presented to the Director
14 and summarized in the section in the detailed treatment
15 of antibiotic drugs and of tranquilizer drugs indicates
16 that compulsory licensing has not been widely used.

17 Further, it was made a matter of record
18 in questioning before this Commission that Dr. Ferguson
19 stated before the Ontario Select Committee he had been
20 refused a licence.

21 The further point which it is important to
22 consider is that the suggested royalty of the holder of
23 the patent was \$320 per kilo for a product which cost
24 that firm \$53, and if that is the type of royalty that
25 is in practice demanded, then voluntary licensing may not
26 be resorted to at all because although it is suggested a
27 firm may give a voluntary licence, they may give it at
28 such a price it would not be worthwhile. Surely there is
29 some evidence of that practice in this judgment.

30 THE CHAIRMAN: Mr. MacLeod, if that was the



1 case, that when a voluntary licence was sought, the
2 patentee said, "Yes, but I want 500% of my costs by way
3 of royalty", wouldn't that likely lead to an application
4 for a compulsory licence?

5 MR. MACLEOD: It would, sir, if the appli-
6 cant considered it a practical course, and apparently up
7 to the time of the decisions reported in this book -- the
8 Green Book -- it was not considered a practical course
9 because the last case was taken to the Supreme Court of
10 Canada and took something like between three or four years
11 to decide. We know Dr. Ferguson, when he was refused a
12 voluntary licence, did not resort to a compulsory licence.

13 THE CHAIRMAN: Do you know how long this
14 case you have cited has taken?

15 MR. MACLEOD: This has taken from May.
16 The opening words are that the application was made on
17 May 30th and 31st 1961.

18 THE CHAIRMAN: So the process is not neces-
19 sarily as long now as you suggested it was formerly?

20 MR. MACLEOD: Apparently not. In a
21 covering letter the Patent Commissioner said in part,
22 "Micro-Chemicals Limited is the manufacturing company
23 for Paul Maney Laboratories. The terms of the licence
24 have not yet been finalized. I gave them two months to
25 agree between themselves and then at their request I
26 extended the time to December 7th 1961. I expect to hear
27 from the parties within a few weeks".

28 There is a chapter here on the development
29 of new drugs; that is Chapter 5 at page 43, which follows
30 the patent section, and it is background material which



1 we believe to be correct, and I think the Commission will
2 find the information in paragraph 105 at page 57 of some
3 assistance as an attempt to summarize developments in the
4 drug industry on the economic side.

5 The first part of the chapter deals with
6 the physical development of drugs. The last paragraph I
7 referred to, paragraph 105 on page 57, refers to the
8 economic effect of the drug explosion on the drug industry.

9 THE CHAIRMAN: Do you agree with Professor
10 Dixon's contention that the drug industry today is a
11 completely different industry from what it was 15 or 20
12 years ago?

13 MR. MACLEOD: With certain reservations,
14 sir, particularly these I would say: that it has been
15 noted by all writers on the subject, and can be established
16 by checking the dates, that the principal firms in this
17 industry have remained constant over the years as the
18 leading firms were normally formed in the 1880's and
19 1900's and periods like that, and you do get a terrific
20 expansion of business in this field, but you don't get a
21 turnover of firms -- at least, we haven't until this date.
22 We have had perhaps a small number of entrants and some
23 leaving.

24 I was going to add the further comment
25 that this terrific expansion has been characterized in
26 the use and sale of certain drugs, and that those
27 companies holding these drugs, which are in the main the
28 older companies, have experienced the largest benefit
29 from the expansion.

30 The next chapter, Manufacturers and



1 Distributors at the Manufacturers' Level: on page 61 you
2 will recall that the manager of Nordic Drugs in Montreal
3 took some exception to our definition of "small ethical
4 drug houses". He thought it was a bit too sweeping, and
5 possibly he is right. The information obtained by the
6 Director from many small firms led him to believe this
7 was the correct situation, but if the definition has to
8 be modified in the light of Mr. Antoft's information, we
9 can agree to it being so modified.

10 The point on page 63 I want to emphasize
11 is that the tables set out on pages 63 and 64 are the
12 names of those companies which in reporting to the
13 Director reported the largest volume of sales. To the
14 best of our knowledge, they are the biggest companies in
15 this field in Canada, and of the firms listed only two are
16 Canadian firms in the sense of not being connected with
17 a parent company in some foreign country, and these two
18 are the Charles E. Frosst and Company and Frank W. Horne
19 Limited.

STATISTICS ARE REQUIRED!

THE CANADIAN PHARMACEUTICAL ASSOCIATION
20th ANNUAL SURVEY

Explanation of Numbered Items on Opposite Page

1. Total sales—total credit from goods sold during the year, both cash and charge.

2. Merchandise inventory at the beginning of the year, January 1, 1961 (*or* your fiscal year).

3. All purchases of merchandise plus Freight In minus Cash Discounts.

4. Merchandise inventory at the end of the year, December 31, 1961 (*or* your fiscal year).

5. Wages and salaries of all employees.

6. Proprietor's withdrawals or Manager's Salary. The proprietor should take a reasonable and regular weekly salary for himself. Failure to do so erroneously increases profit percentage.

7. Rent. If you own the building charge a fair rent to the business.

8. All expenditures for advertising including show-cards for windows and counters, crepe paper, etc.

9. Gasoline, oil, repairs on motorized delivery equipment.
10. Depreciation on store fixtures. Include the maximum amount allowable under the Income Tax law.

Depreciation on motorized delivery equipment. Include the maximum amount allowable under the Income Tax law. This will be a different rate than that allowed on store fixtures.

11. Taxes and licenses. Do not include taxes on the building if you own it. Do not include your own income tax.

12. Insurance on fixtures and merchandise; any liability insurance. Do not include personal life insurance.

13. Interest paid to bank or other parties for use of borrowed capital.

14. Repairs to electrical equipment, floor coverings, etc.

15. Uncollectable charge accounts actually written off the books.

16. All other expense items.

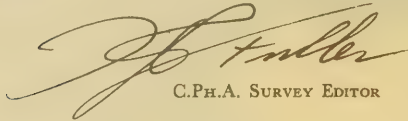
17. All other income such as from telephone pay station, vending machines, post office, etc.

PLEASE ANSWER THESE QUESTIONS ABOUT YOUR BUSINESS

1. Individual proprietorship, partnership, or corporation?
2. Province?
3. Population of city or town?
4. Number of other pharmacies in same city or town?
5. Do you own your own building?
6. Accounts Payable, December 31/ 61 (or end of fiscal year)
7. Accounts Receivable, December 31/ 61 (or end of fiscal year)
8. Present value of fixtures and equipment at today's estimated resale price
9. Is your pharmacy self-service except the dispensary?
10. Number of hours pharmacy is open per week
11. Number of hours worked per week by owner(s)/manager

Last year, when we faced the pressing need for retail pharmacy statistics, your response to the C.Ph.A.'s Annual Survey of Retail Pharmacy Operations was the greatest ever. Many thanks to the 664 who provided the information published in the September issue of the Canadian Pharmaceutical Journal. These statistics formed a vital section of Pharmacy's various presentations to the many government committees and commissions of the past year.

Now we need even more voluntary participation in this statistical project. We need 1,000 statements of retail pharmacy financial operations. All are treated confidentially. May we hear from you soon?


C.P.H.A. SURVEY EDITOR


C.P.H.A. SECRETARY-MANAGER

THE CANADIAN PHARMACEUTICAL ASSOCIATION
20th ANNUAL SURVEY
PROFIT AND LOSS STATEMENT

FOR 1961

(Fill in the spaces below with your \$ figures, omitting the cents)

Explanation of Numbered Items on Opposite Page

1. Total Sales (cash & all charge sales made during the year)	\$.....
Deduct Cost of Goods Sold:	
2. Inventory at beginning of year (merchandise at cost)	\$.....
3. Purchases (of merchandise whether paid for or not)	.....
Total Inventory and Purchases	
4. Deduct Inventory at end of year	.....
Cost of Goods Sold (Subtract 4 from the sum of 2 and 3)	
GROSS PROFIT ON SALES (Subtract Cost of Goods Sold from Sales)	\$.....
Deduct Expenses:	
5. Employees' Wages	\$.....
6. Proprietor's Withdrawal or Manager's Salary	.....
7. Store Rent (if you own your own building, charge rent for comparable quarters)	.....
8. Advertising	.....
9. Delivery Expense (operating costs of delivery auto, truck or motorcycle)	.....
10. Depreciation:	
Store Fixtures	.....
Delivery Equipment	.....
Heat, Light & Power	.....
11. Taxes (except on building, income and profit) and licenses	.....
12. Insurance (except on building)	.....
13. Interest paid on borrowed capital	.....
14. Repairs	.....
Telephone	.....
15. Bad Debts Written Off	.....
16. Miscellaneous	.....
Total Expenses (subtract from gross profit on sales)	
NET PROFIT (Subtract Total Expenses from Gross Profit)	\$.....
Add Other Income:	
17. From telephone booths, vending machines, commissions, post-office, etc.	\$.....
Total Other Income	
NET INCOME (Add Total Other Income to Net Profit)	\$.....

PREScription INFORMATION

(a) Number of New Prescriptions.....	Value \$.....
(b) Number of Repeat Prescriptions.....	Value \$.....

Return To 221 Victoria Street, Toronto, Ont.



PmCH/dpw

1 Chapter 7 beginning with paragraph 113
2 deals with retail pharmacies which is largely statistical
3 information for which we are greatly indebted to Professor
4 Fuller of the University of Toronto. Apart from the
5 rather limited statistics available from D.B.S. the only
6 really useful statistics which we were able to obtain were
7 from Professor Fuller. You will have later editions of
8 Professor Fuller's yearly reports which were put in by
9 Mr. Turnbull, I believe.

10 On Chapter 8, dealing with the wholesale
11 drug trade beginning at page 80, there is just one point;
12 it was suggested by Mr. Turnbull, I believe, that co-opera-
13 tives were more important in the wholesale field than had
14 been suggested in the statement. Having looked at what
15 sources I could very quickly since his evidence was given,
16 I am inclined to agree that this is so, they are
17 considerably more important than we indicated.

18 MR. WHITELEY: Is that a question of
19 co-operatives or a question of arrangements whereby the
20 wholesaler followed systems of rebates?

21 MR. MACLEOD: I am given to understand
22 that in the Province of Quebec where there are, I believe,
23 two that are co-operative in nature and there is one in
24 the West that was not mentioned in the statement which
25 may be rebating but I do not know that you could even
26 call I.D.A. a strict co-operative. Although I.D.A. is
27 owned by members the members own it by purchasing shares
28 and their dividends are related not only to the rebate on
29 purchases but dividends on their shares so in the ordinary
30 sense it would perhaps fit into the co-operative picture



1 but might be more strictly construed as a profit sharing
2 arrangement.

3 The channels of distribution and trade and
4 retail trade do not require extended comment. There is
5 a reference to the use of guides, the pricing of prescrip-
6 tions, information which was obtained by the Director
7 on his researches there. I believe it was Mr. Turnbull
8 again who suggested he had no information about the word
9 "pharmocist" used in marketing prescriptions. You will
10 recall, of course, we have evidence of several druggists
11 it was used and understood by them and in a quick glance
12 the first place I discovered it was in the Druggists'
13 Bulletin Surveys used in British Columbia which on the
14 second frontispiece dealing with certain general principles
15 there is a note at the bottom:

16 "When marking copies of prescriptions
17 please adhere strictly to the C.P.A.
18 codeword pharmacist".

19 Of course, it is hardly necessary for me
20 to mention this but in passing I should say that the
21 claim the Director is making in regard to the practice
22 of druggists at the retail level is that the use of these
23 pricing guides and of price books covering the whole field
24 and available to individual druggists and of manufacturers'
25 catalogues set out suggested retail prices does have a
26 distinct tendency and operates in practice to produce
27 uniform prices and to reduce competition in the sale of
28 ethical drugs. We do not, I want to make this clear,
29 that the Director does not suggest there is any binding
30 price agreement contrary to the Act; they are guides and



1 guides only. If the Director was convinced there was a
2 pricing agreement he would be under a statutory obligation
3 to start an inquiry. We do say they have the effect of
4 reducing competition and producing uniform prices.

5 Chapter 10 I do not think requires any
6 comment. You have, of course, before you some additional
7 evidence on these matters of advertising and promotion.
8 We have very informed comments, I would suggest, of Mr.
9 Thompson and Mr. Antoft. Mr. Thompson expressed the
10 wish that a better way could be found to reduce the tremen-
11 dous cost of advertising and promotion and to make the
12 dollars spent for those purposes produce better results
13 and Mr. Antoft said that it was just a rat race and
14 because there was more going out all the time, more of
15 the promotional literature, more calls by detailmen and
16 that sort of thing if the manufacturer wanted to stay in
17 the picture he had to increase his expenditures. It was
18 just a vicious circle resulting in larger expenditures
19 all the time. Taking those two things together I suggest
20 they are very significant. Dr. Dixon suggested these
21 expenditures resulted because they were the most successful
22 way of doing business. Now, perhaps that is so, but in
23 the opinion of two experienced men in the drug field they
24 are wasteful and becoming increasingly wasteful as time
25 goes on.

26 Next we come to medical research in Canada
27 in which we have assembled all the information we were
28 able to obtain. You will have some more of that from the
29 submissions of Mr. Conder and the only point I want to
30 make is to recall to your minds the evidence again of Mr.



1 Thompson to the effect that the statistical surveys, as
2 I understood him, both the kind we put in the Green Book
3 and others of that nature may omit a fairly important
4 source of money in that drug companies in the United States
5 may independently give research scholarships or things
6 of that nature to Canadian hospitals. We have not
7 covered that statistically, I do not know how we could,
8 but I draw the Commission's attention to the fact that
9 is not included in our figures.

10 Quality control, again we have given all
11 the information we can assemble. I think the documents
12 put before you by the Manufacturers' Association also
13 have something to say about that. Here again, Mr. Thompson
14 made an interesting remark about this matter when he said
15 that the quality control starts when the raw material
16 comes in the door and there are many expenses which cannot
17 be strictly traced to this purpose and classified under
18 this head. There is probably some truth in what he says
19 in suggesting the situation is not too much different
20 from that obtaining in other industries where a high
21 degree of cleanliness applies, such as in a candy manufac-
22 turing plant and so on. There are, as we all recognize,
23 over and above the particular care and cleanliness part
24 that must be taken in the examples I have given, there
25 are special expenditures in relation to drugs and I
26 suggest these might very well be caught and caught very
27 completely in the statistics we have assembled.

28 Now, we come to the Chapter on profits on
29 drug prices in Canada. I seem to be picking on Mr. Thomp-
30 son, but since he was one of the few manufacturers'



1 representatives who appeared that is perhaps inevitable.
2 Mr. Thompson referred to certain evidence of or certain
3 articles of Mr. Moley which appears in Newsweek and if
4 my friend Mr. Hume will let me have the Reader's Digest --

5 MR. HUME: Double hearsay again. There is
6 a good joke on the page before.

7 THE CHAIRMAN: Which issue is this?

8 MR. HUME: The current one which arrived
9 yesterday.

10 MR. MACLEOD: Mr. Moley is quoted as
11 saying:

12 "The real nub of the controversy is whether
13 the public has to pay excessive prices.

14 And since excessive prices should be reflected
15 in company profits, let us see whether
16 those profits are out of line with those of
17 other growing industries".

18 And he goes on then to give the number of
19 drugs firms in the first ten and other particulars of
20 that nature, some of them referred to by Mr. Thompson. I
21 suggest in relation to the drug field at least, Mr. Moley's
22 statement is an over-simplification. He says that if
23 prices are excessive it must be reflected in earnings.
24 Now, we have the undisputed evidence of Mr. Dixon and the
25 material in the statement to the effect that competition
26 works in a different way in the industry, it is not price
27 competition, it is not the lowest price that counts.
28 There are expenses that force up the final price.

29

30



1 So that you cannot say in this industry
2 an excessive price would necessarily be reflected
3 in extremely excessive profits. I think that
4 point is quite clear.

5 THE CHAIRMAN: You mean by that, I suppose,
6 that there may be waste or extravagance and
7 unnecessary expenditures on other matters which in
8 the end reduce the profits.

9 MR. MACLEOD: That is correct sir. If
10 drug A was sold on a price competition basis, a
11 much lower price might return the same profit as
12 the manufacturers as if drug A is sold under the
13 present conditions, so that the excessive profit does
14 not necessarily indicate the lack of excessive profits,
15 if in fact there is a lack of excessive profits,
16 does not indicate the lack of an excessive price,
17 or the absence of an excessive price.

18 THE CHAIRMAN: Have we any evidence, except
19 to the effect that companies engage in these
20 expenditures because they find them necessary in
21 order to make sales? I am speaking of advertising
22 and promotion.

23 MR. MACLEOD: That is correct sir.

24 THE CHAIRMAN: If it does not makes sales it
25 won't make profits, I take it?

26 MR. MACLEOD: If they sold on a price
27 competition basis.

28 THE CHAIRMAN: They still have to sell.

29 MR. MACLEOD: They still have to sell. I
30 just wanted to make sure my present point is



1 distinct, that the argument advanced by Mr. Thompson
2 quoting Mr. Molier that lack of excessive profits
3 mean there couldn't possibly be excessive prices
4 does not necessarily follow in the circumstances of
5 this industry. Costs and selling prices on the
6 manufacturer's level. We of course have emphasized
7 in the Statement that the difference between costs
8 and selling prices is not necessarily profits. And
9 the chapter deals largely with a compilation of the
10 information which the Director was able to obtain
11 under the headings of the various drugs to which the
12 information relates.

13 In Chapter 16, comparisons between drug
14 prices in Canada and prices of similar products in
15 other products are made. These again are the best
16 information that we could gather, and although they
17 have been criticized to some extent, I think they
18 stand up fairly well.

19 Reference was made to the fact that where
20 a manufacturer in the United States is receiving 10
21 per cent less than a manufacturer in Canada, the
22 net of each is actually both the same because of
23 the fact of the sales tax, and that is quite true,
24 but another counter-balancing point which does not
25 apply to manufacturers, but applies to retailers,
26 is that in the United States you have the Fair Trade
27 Laws, and an examination of American price lists
28 indicates that the Fair Trade price is almost always
29 of the order of 10 per cent below the list price,
30 and the comparisons that are made here are between



1 list prices in the United States and list prices in
2 Canada.

3 I direct your attention to specific prices
4 on page 213, under the heading of Reserpine .
5 You will recall, I understand because of the patent
6 difficulties in Canada which are referred to earlier
7 in the Statement, that there was evidence to the
8 effect that a price war broke out in respect of
9 Reserpine, so that in that particular instance the
10 price is considerably below the U.S. price. That
11 is the price in Canada is considerably below the
12 price in the U.S., and I suggest that affords
13 corroboration that the patents are the keys, that
14 the information gathered by the Director supports
15 that at every time. Put a drug under a patent
16 and the price stays up. Remove the patent and the
17 price immediately starts to fall, or not necessarily
18 remove the patent, licence a number of producers,
19 which is what happened in the case of Reserpine.

20 THE CHAIRMAN: In Canada do you mean, but
21 not in the United States?

22 MR. MACLEOD: But not in the United States.
23 Now, the summary and conclusions are set out in
24 some length, and I don't think there is any point
25 in me dealing with them in detail.

26 Perhaps I might say this, that we are not
27 criticizing the patent system as such. That is
28 a matter of Government policy, whether patents will
29 be granted, and the effects which they will have,
30 but the Government of Canada has declared that



1 patents in this field are subject to one modification.
2 That they are only limited rights, and the provision
3 for compulsory licences is expressly linked to a
4 statement of the purpose of those compulsory licences
5 special to the drug industry only, and it says that
6 they are for the purpose of providing food and
7 medicine at the lowest price consistent with giving
8 due reward to the inventor. Now, the patent
9 system of course has the effect of putting prices
10 higher in any industry as the normal result of
11 monopoly conditions created by the grant of a patent,
12 which is what a patent is of course, but in this
13 industry there are a number of points. You cannot
14 advertise in the ordinary way. Doctors select
15 most of the drugs. The whole thrust of such
16 competition as exists is to get doctors to prescribe
17 specific trade name drugs. For this purpose direct
18 mail and detail men are used. Price plays little
19 or no part. Prices are high and there is no
20 competition in any real sense on the price aspect.
21 There is undoubtedly competition in advertising
22 in production of new drugs, though not to such a
23 great extent in Canada, and in other ways, but these
24 practices have an adverse effect, if any, on price
25 competition. Instead of pulling prices down, as
26 price competition would, they put them up, and the
27 shield behind which this is possible, what makes
28 these practices possible, and what makes them work
29 out, and what makes them the most efficacious
30 business way from the point of view of the manufacturers



1 is simply the patent system and the failure to use
2 compulsory licences, because that is the key to the
3 whole situation, and upon it it is possible to carry
4 all these other things to absurd and ridiculous
5 extremes. The use of brand names, descriptive
6 literature, and that sort of thing.

There is perhaps one other point that
just occurred to me. I had forgotten to make a
note of it. It was suggested at one time that we
were blowing hot and cold, in that we were saying
there are too many drugs on the market, and at the
same time that there was not enough competition.
There should be more firms producing drugs. The
situation I think is explained quite clearly in the
Statement. We reported certain medical objections
to the proliferation of drugs to no useful purpose.
That is not the same thing at all as saying that
the same drugs should be sold by several
manufacturers, and that they should compete in the
sale of those drugs.



BL/dpw

1 Incidentally, the medical view on prolifera-
2 tion of drugs is referred to several times in the statement,
3 one example being the appendix at the end. But I would
4 also direct the Commission's attention to the evidence
5 given by Dr. Schecter in Ottawa referring to a report by
6 Dr. Modell which appeared in an American pharmaceutical
7 journal. I think that is all I have, sir.

8 THE CHAIRMAN: I think we will have a
9 short break before you begin, Mr. Hume.

10

11 --- Short Recess

12

13 MR. HUME: May it please the Commission.
14 I had not originally intended, your honours, to prepare
15 any summation of the evidence, because I had come to the
16 conclusion, as I have in several of these inquiries, that
17 the evidence is there, you have heard more of it than I
18 have, and that perhaps there is very little I could add
19 that would be of assistance. You, Mr. Chairman, had
20 indicated to me and Mr. Frawley in Toronto that this
21 might be of assistance and so I launched into the problem
22 of looking through the transcripts again to see wherein
23 I could be of assistance.

24

25 I might just say in passing that my
26 original draft submission has been scrapped because I
27 realized I was not being very much of assistance but more
28 the making of a speech, and this is a failing I try to
29 avoid as far as possible, and so I commenced again, and
30 I have a few remarks I should like to make which I
regard as pure summing up and which I hope will be of



1 some assistance. If I make remarks which are not of
2 assistance it is done innocently and it is not to add to
3 your labours but merely in the hope that what I say will
4 point up some particular points of view which I feel it
5 is my duty on behalf of my clients I should mention.

6 I want to make the general mention which
7 I think should be made publicly, and that is to extend
8 to my learned friend Mr. MacLeod my very sincere compli-
9 ments for the way in which he has conducted this inquiry
10 and himself in this inquiry from the very beginning. Mr.
11 MacLeod is, I think, in a very peculiar position. He is
12 appearing on behalf of the Director, and while it is
13 important and has been said many times, perhaps many
14 times before this Commission, that not only must justice
15 be done but it must appear to be done, Mr. MacLeod, in
16 his capacity as acting for the Director, has also been
17 called upon in the minds of the public - and I have heard
18 this comment in one or two places - Mr. MacLeod has been
19 sort of cast in the role of Commission counsel, and to
20 that extent he appears to be presenting the evidence and
21 then leading the case for the Commission, and I just want
22 to say to him I have the greatest admiration for the way
23 in which he has restrained his remarks and the cross-
24 examination of others and the way in which he has handled
25 himself. Mr. MacLeod had not any idea I was going to say
26 what I have just said, but I think I am saying what was
27 in the minds of others connected with this inquiry.

28 Mr. MacLeod has attempted to divide his
29 activities as sort of Commission counsel where he took
30 witnesses in the first instance, where if you had a



1 counsel that would be his function; and while it is
2 pretty hard to live with something since 1958 and not
3 be enthusiastic about his cause, he has, I think, bent
4 over backwards to be fair.

5 I think also I should reiterate, in view
6 of what happened this morning, so that there will be no
7 misunderstanding with respect to my position in the
8 matter. This is, in fact, and has been said many times,
9 an inquiry under Section 42, and, being such, it is not
10 perhaps the usual inquiry with which the Commission is
11 faced. But I think it is probably plain - and the more
12 I talked to my learned friend Mr. Frawley unofficially,
13 I seemed to be confirmed of the fact - that this was not
14 general across Canada. Possibly if it had been the
15 Commission might have received some different submissions
16 in evidence, but I think it is quite clear from Section 42 -
17 and I state my position now perhaps unnecessarily to the
18 Commission, but so that my remarks may have some context -
19 that the evidence that has been submitted and laboriously
20 compiled by Mr. MacLeod and his colleagues must, if it
21 has to have any bearing on the inquiry, have some relation
22 to monopolistic situations or situations in restraint of
23 trade in order to be relevant. I make that statement
24 because it is my considered opinion, and I will refer in
25 some detail to the evidence, that you have heard very
26 little relevant evidence in this inquiry. The Section,
27 of course, provides, as it is quite clearly stated, that
28 the Director may either upon his own initiative or at the
29 direction of the Minister or even at the instance of this
30 Commission, which is not the case in this present situation,



1 carry this into effect. The Director or his predecessor
2 must have sincerely felt that this was a situation which
3 called for some inquiry, and no doubt the previous
4 Director was influenced by what was happening across the
5 border, and he may have been influenced partly by the
6 fact that the Province of Ontario would conduct some
7 inquiry, and he no doubt felt that this was a matter of
8 public interest and there was something existing which
9 perhaps required some serious consideration. He therefore
10 carried out the inquiry, and under Section 42 you have
11 the duty to consider the material "together with such
12 further evidence or material as the Commission considers
13 advisable...", and in due course you have the duty of
14 making your report under that broad provision of the
15 statute. To consider any other evidence which you may
16 consider advisable or material, that is a very broad
17 provision, and you can, of course, refer that to the
18 domestic practices of husband and wife and to the purchase
19 of food and anything that you consider to be relevant.
20 You have, I think, sir, conducted the inquiry by permitting
21 anyone to come forward and say what they wanted to say,
22 and having heard all that evidence, it is my first point
23 to you that you have not heard any evidence whatsoever
24 that indicates there has been any monopolistic situations
25 or situations in restraint of trade, and that while you
26 may have had an interesting experience in hearing the
27 views of the public in regard to pharmaceutical products,
28 their manufacture and distribution in Canada, you have not
29 had any evidence submitted to you within the provisions
30 of Section 42.



1 Notwithstanding this limitation, there has
2 been a great deal submitted to you in argument and a
3 great deal of cross-examination, which I have read in
4 considerable detail, of my learned friend, Mr. Frawley,
5 which was directed to the matter of drug prices per se.
6 It is said that drug prices cost too much, it is said and
7 no doubt will be said more often, and Mr. Frawley and
8 others who came before you intimated that they are more
9 concerned with the matter of drug prices than whether or
10 not there are monopolistic situations or situations in
11 restraint of trade. The Director in his statement, upon
12 which I also compliment my learned friend, makes it clear
13 in his introduction to this statement that the material
14 was prepared on his own initiative, "Following informal
15 complaints about the high cost of drugs", and as is well-
16 known, the material in the Green Book was submitted under
17 Section 42.

2 I think, therefore, I should like to make
18 my general submission, which will not be overly long,
19 under two headings. I would like to make a submission
20 in respect of the Green Book upon which the Director
21 primarily relies, since the Director himself has not
22 called any additional evidence by way of viva voce
23 evidence. It is my respectful submission that the
24 material in the Green Book, consisting of 290 pages and
25 its appendices, does not show any evidence whatsoever
26 that there are any monopolistic situations or practices
27 in restraint of trade with regard to the manufacture of
28 pharmaceutical products.
29
30



1 The Director indicated that his inquiry
2 relates to the sale and distribution of drugs
3 generally. However, he restricted the detailed
4 information about the costs and selling prices etc.
5 to the antibiotic and ataraxic drugs, and, as the
6 Director points out, they were chosen because they
7 were the most widely used types of ethical drugs.

8 It is my respectful submission the
9 Commission should be cautioned that a great deal of
10 the material and conclusions in the Green Book are
11 restricted to those two pharmaceutical products
12 and it does not necessarily present a representative
13 picture of the entire pharmaceutical manufacturing
14 industry.

15 This is not to criticize, Mr. Chairmar
16 and gentlemen, the decision of the Director in
17 selecting these two ethical pharmaceutical products,
18 but merely to emphasize the picture presented by
19 the material on these two products can in some
20 respects present a distorted picture with respect
21 to the entire pharmaceutical industry.

22 My second observation is perhaps the
23 obvious one that you might have expected me to make
24 first, and that is that the material in the Green
25 Book contains, as it necessarily does -- and for
26 this I again do not criticize the modus operandi
27 of the Director -- a great deal that is opinion.
28 The Director makes wide use of quotations from
29 newspapers, trade journals and similar publications.
30 Each one of us has our own experience with the fourth



1 estate, and it is beyond question that in selecting
2 quotations from news items, or items from the
3 editorial page that the particular quotation
4 selected can and often does present the editorial
5 policy of the newspaper. It is sometimes affected
6 by politics and sometimes by prejudice and sometimes
7 by lack of knowledge. I make a general statement
8 and I do not intend by my remarks to be taken to
9 criticize the press. I am merely pointing out
10 that it should be recognized in using quotations
11 they must be used, I submit, with considerable
12 care, and there should be some degree of caution
13 in taking a quotation without understanding who
14 was the author of it, by what means did he have the
15 knowledge to write about his subject, and in what
16 context the quotation appears. It would be
17 impossible to refer to the many quotations throughout
18 the book or to examine -- and I have not made any
19 attempt to do so -- these quotations to see whether
20 the people making them are qualified to have the
21 opinions. My only comment with respect to the
22 matter is to express the regret that some irresponsible
23 statements have apparently now received the mark of
24 authenticity by the fact they are included in the
25 Green Book. An example of this danger is
26 contained in the evidence of Mr. Ralph Thompson
27 at page 1490 of the transcript in which Mr. Thompson
28 pointed out that the inaccurate quotation which
29 appears at page 59 of the Green Book indicating that
30 Cyanamid had distributed samples at a cost of \$2



1 million, which inaccuracy is repeated again at
2 page 115 and, which is more important from my point,
3 was then picked up by Dr. Schecter and repeated to
4 this Commission at page 272 of the transcript as
5 a positive statement of fact. Dr. Scheter said
6 at page 272:

"DR. SCHECTER: When American
7 Dynamid first brought out auraomycin
8 they spent \$2 million on advertising."

9 You, Mr. Chairman, were somewhat surprised
10 by that because the next remark is attributed to you
11 in the transcript:
12

13 "THE CHAIRMAN: That is not
14 samples?"

15 And Dr. Scheter replied:

16 "DR. SCHECTER: That was samples."

17 Then Mr. MacLeod said, and instigated it --
18 no doubt he believed it as a statement of fact --

19 "MR. MACLEOD: That was samples".

20 And then you said:

21 "THE CHAIRMAN: Samples amounting
22 to \$2 million."

23 That is the end of the quotation. I am
24 sure when Mr. MacLeod, or whoever wrote these two
25 pages in the book, reproduced them from an American
26 publication they believed it was true, and I am
27 sure Dr. Schecter believed it was true. This is
28 only one example, and perhaps it is the most dramatic
29 one, but it is the one I can think of quickly, and
30 Mr. Thompson pointed out in his evidence this figure



1 was dreamed up by a student writing a thesis, was
2 not verified with his company records, was incorrectly
3 reported in the United States Federal Trade Commission's
4 Economic Report of June, 1958, and the true figure
5 was \$180,000.00. I emphasize this point merely
6 to illustrate the danger of accepting statements
7 in newspapers and trade journals as fact without
8 a proper knowledge of their accuracy. I am not by
9 any stretch of the imagination to be interpreted as
10 casting doubt on every quotation in the Green Book.
11 It may be that all but this one are factual and
12 correct, and I am sure the Director thought it was
13 accurate or he would not have put it in the book.
14 I am sure Dr. Schecter, reading it in the Green Book,
15 was led to believe it was accurate, and I am sure
16 this error would have continued to have been
17 perpetuated if Mr. Thompson had not come forward
18 and given the accurate figure from his company records.

19 How many more have occurred in newspapers
20 and magazine accounts that are sprinkled
21 throughout the Green Book I do not know, but the
22 existence of this blatant error should give warning
23 of the dangers of accepting such hearsay evidence
24 and it underlines the wisdom of the courts of law
25 in rejecting hearsay evidence, a rule which has
26 come down to us as a result of a thousand years of
27 experience of trying to get at the truth, and it
28 is quite popular in administrative tribunals,
29 before whom I have appeared on several occasions,
30 to sneer somewhat at the rules of evidence and say,



1 "We are not bound by the rules of evidence". My
2 answer to that is "More the pity," because these
3 rules, while appearing technical, are the
4 distillation of about a thousand years of experience,
5 and I regard this as important.

6 My next comment with respect to the Green
7 Book -- and it is admitted by the author of the
8 Green Book -- is that it contains many instances
9 where the Director, or my learned friend Mr.
10 MacLeod or his associates are giving their own
11 opinions. On page 1263 of the transcript, line
12 4, Mr. MacLeod stated that they are giving broad
13 general statements in some regards. Now, of course,
14 the Director and Mr. MacLeod are entitled to their
15 own opinions, but such opinions I respectfully submit
16 are not evidence. Examples of opinion appear in
17 section 2 where it is the opinion of the Director
18 that preliminary inquiries indicated that the prices
19 of drugs were extremely high in relation to manufact-
20 uring costs and there is a marked uniformity of
21 pricing among manufacturers. This is the
22 Director's opinion, and it may represent fact, but
23 I don't think the Director or Mr. MacLeod -- and
24 certainly not myself, who is not connected with the
25 industry -- is entitled to state that as a fact,
26 other than an opinion, and I think Mr. MacLeod
27 indicates this is only an opinion. Some of these
28 opinions have been challenged at the public hearings.
29 I have in mind the evidence of Mr. Antoft in Montreal
30 at page 1384 and following where he did not agree



1 with the opinion of the Director as set out on page
2 61 of the Green Book. It is not a matter of
3 surprise to me that Mr. MacLeod's opinions are not
4 generally accepted, because Mr. MacLeod has done
5 a far better job than I could have done, and Mr.
6 MacLeod's training and mine, being in law, have
7 very little background knowledge of the manufacture
8 of pharmaceutical products. The only difference
9 between the author of the Green Book, or Mr.
10 MacLeod representing that author, and the rest of
11 the public is that when a witness came forward
12 before the Commission to present his opinions in
13 his brief he was subject to cross-examination by
14 counsel for the interested parties, and he was
15 subjected to questioning by members of the Commission.
16 Mr. MacLeod comes forward with his Green Book and
17 he was subject, of course, to no such cross-
18 examination, and thus counsel have had no opportunity
19 to test his opinions to find out whether he has any
20 basis for those opinions, whether he knows what he
21 is talking about and where he got the information.

22 MR. WHITELEY: That is a rather sweeping
23 generalization.

24 MR. HUME: Well, it is not sweeping for me
25 to make the statement that I think we have had no
26 opportunity of cross-examination to find out these
27 things. What is sweeping about that? We have had
28 no opportunity to cross-examine Mr. MacLeod to
29 find out whether or not he had any basis for these
30 opinions or whether or not -- it may be that on cross-



1 examination he could demonstrate beyond question
2 he has more knowledge than anybody else in Canada,
3 but what, may I ask, is so sweeping?

4 MR. WHITELEY: Because paragraph 2 states
5 that the statements there made were based on
6 preliminary inquiry, not on some formulation of
7 opinion without inquiry.

8 MR. HUME: But that is the opinion of the
9 Director.

10 MR. WHITELEY: And the Green Book sets out
11 in considerable detail the results of the inquiries,
12 and those results are open for examination and cross-
13 examination and rebuttal.

14 MR. HUME: No, I am sorry, that is my point.
15 No doubt I haven't made my point. They are open for
16 examination but they are not open to cross-examination.

17 MR. WHITELEY: I said "rebuttal".

18 MR. HUME: You said examination, cross-
19 examination and rebuttal, and I say they are open to
20 rebuttal, but my only point is that every person else
21 who came forward with a brief in which they would
22 make a statement like that is subject to cross-
23 examination. Again, I am not being interpreted,
24 I hope, as being critical of the procedure, but I
25 am merely pointing out that the opinions, wherever
26 the opinions appear -- and I have some examples of
27 opinions -- wherever the opinions appear, nobody has
28 had an opportunity of demonstrating by cross-
29 examination a test of these opinions.

30 MR. WHITELEY: How about the other two



1 points -- rebuttal and examination?

2 MR. HUME: I am making no point about that.
3 My only point is we have not had the opportunity of
4 cross-examining the author of the brief, and everybody
5 else who came forward with a brief was subject to
6 questioning. I go that far. We have had an
7 opportunity of rebutting it, and it has been rebutted,
8 and I think I have a point, and make the point for
9 what it is worth, that all other parties who brought
10 forward a statement of opinion have had at least the
11 potential that it could be tested by cross-examination,
12 but this is not the case where the material and
13 evidence and opinion -- because it is not just
14 evidence; it is opinion, a lot of it -- and that is
15 my only point.

16 MR. WHITELEY: I think there is a difference
17 between a person who comes forward and states an
18 opinion as such, and a person who comes forward and
19 states an opinion and presents with it all the factual
20 information on which that opinion is based. I
21 think he is in a somewhat different position.

22 MR. HUME: But we haven't seen all the factual
23 information. Mr. MacLeod indicated he has two
24 filing cabinets full of material which none of us have
25 seen -- and I am delighted about that because I would
26 not have understood it. However, if you will bear
27 with me I have one or two points where opinions have
28 been given with respect to the respective patents
29 where, in my humble submission, it is a matter of
30 opinion, and if it is accepted as gospel I might as



1 well not make my point. I hope it will be recognized
2 as the opinion of the Director, and it may be the most
3 informed opinion, but we have not had the chance of
4 testing it. I merely note that in passing.

5 THE CHAIRMAN: The position of the Commission
6 is that we want to know what the facts are and arrive
7 at our own opinion.

8 MR. HUME: Right.

9 THE CHAIRMAN: The Director does submit
10 normally quite a large number of facts which are
11 selected from the information he has obtained as a
12 whole, and he gathers that in what we call the Green
13 Book or, in this case, the statement of material,
14 and he may express his opinion as to what those facts
15 mean, but we do not necessarily agree with them.

16 MR. HUME: I recognize that, Mr. Chairman.
17 I am just trying to caution, and I will not repeat it
18 again, and I do hope my point is simply understood
19 as this, that wherever there are opinions appearing
20 in the Green Book they will not be taken as gospel.
21 The evidence is quite clear in my mind that a great
22 many people reading the Green Book say, "There is
23 a statement and it is in the Green Book, therefore
24 it is a fact." I am only trying to point out
25 wherever there is opinion it should be regarded as
26 opinion, and secondly, there has been no chance of
27 testing that opinion.



PMcH/dpw

1 MR. WHITELEY: It seems to me we differ
2 on the use of the word "test".

3 MR. HUME: I am using it in the legal sense;
4 when I have a witness in the witness box who says so-and-
5 so I have the opportunity on behalf of my client to test
6 that opinion, to find out whether he knows anything about
7 it, where did he get his information from, is it double
8 hearsay or triple hearsay, is it based upon fact or is it
9 a conclusion that is a mistaken conclusion because we all
10 make mistakes; I make mistakes, you make mistakes, we all
11 make mistakes as to the meaning of something we read.
12 That is the purpose of cross-examination and it is so
13 importantly recognized in a court of law that if a witness
14 happens to drop dead after giving his evidence in chief
15 it would not be accepted if it was not subject to cross-
16 examination.

17 MR. WHITELEY: It is a question of testing
18 how far cut the facts may go and how you can test these
19 things - there may an opinion expressed in a book and you
20 may turn to another page and say "Here is what it is
21 based on" and it may be clear that is not right. That is
22 a form of testing, that is one form of testing.

23 MR. HUME: On that basis when Mr. Conder
24 or Mr. Thompson came forward with a brief or somebody in
25 Vancouver came forward with a brief and said "Here is my
26 opinion and here are the facts" you would subject it to
27 a test of whether she made a study, whether she knew what
28 she was talking about. As I say, I think I have a valid
29 point and if you did not think so that is fine but I
30 think I should make that submission that this is one



1 document before this Commission which has not been tested
2 by cross-examination. I went through and without being
3 critical I picked up some of the opinions where I thought,
4 as an example of what I was about to indicate - paragraph
5 467 which is, I think, pretty near the summary of the
6 piece, there is an opinion, at least in my view it is an
7 opinion and I may be wrong in that but I took it as an
8 opinion where the author expresses the opinion that the
9 prices of certain drugs are affected by the control over
10 the manufacturer exercised through patents. Mr. MacLeod
11 made that point within the last hour. In my respectful
12 submission it is a matter of opinion; it may be informed
13 opinion, it may be opinion that should be accepted as
14 fact.

15 THE CHAIRMAN: These are stated to be his
16 conclusions on the facts which are details set out here.

17 MR. HUME: Right, and as I say they are
18 opinions.

19 THE CHAIRMAN: Oh, yes.

20 MR. HUME: I am aware of the fact that
21 this doubles the material and so on and as I say I am
22 trying to indicate some examples of where opinions have
23 been expressed which I agree I had a perfect right and
24 in some cases people who come forward and disagree but
25 nevertheless if I might go on and give some of these
26 opinions, the second ---

27 MR. WHITELEY: You are not saying these
28 points cannot be tested in some way?

29 MR. HUME: I am suggesting they cannot be
30 by cross-examination. That is the only way I can test as



1 counsel for an interested party and it may not be supported
2 by the material and I am going to suggest that all these
3 opinions in the conclusion are not in due course but -
4 that is only my opinion, if we get down into relative
5 opinions, right down to ---

6 MR. WHITELEY: How would you test that
7 with a witness? He looks at the facts and says "That is
8 my opinion and this is the conclusion". How can you go
9 behind that?

10 MR. HUME: I can inquire of him what work
11 he has done on it, what information he has.

12 MR. WHITELEY: We may have had the
13 witnesses there and they have been asked "What do you
14 base your opinion on?" and they answered, and as far as
15 I can recall there is no way of going behind that.

16 MR. HUME: You have asked a witness as to
17 whether they make an opinion "Well, I read it in the
18 Calgary Albertan", then you could say in the particular
19 articles to which you had reference that this was not a
20 very informed opinion and ---

21 MR. WHITELEY: That again is an opinion.

22 MR. HUME: Well, we are into semantics now,
23 everything is an opinion. There are facts, of course,
24 but a great deal of the conclusions are opinions and I
25 repeat, I suppose it is not necessary for me to do so,
26 that we just have not had a chance of testing some of
27 these things. The Director expresses the opinion that
28 the compulsory licensing provisions of the Patent Act
29 appear to have proved ineffectual to combat the situation
30 and this is based upon the material contained in the



1 chapter and I am going to suggest that the material there
2 suggests things and in Mr. Michel's opinion evidence indi-
3 cated in his opinion this was fact and he is the Commissioner
4 of Patents.

5 The next statement in the same thing, there
6 is a quotation which says:

7 "This conclusion is not intended to imply
8 any opinion about patents as such, it is intended simply
9 to indicate that, in relation to the sale of drugs in
10 Canada, patents have been and are being used to create
11 monopolistic situations which the Canadian law appears
12 to have been designed to prevent".

13 MR. FRAWLEY: Which the Canadian law
14 appears to have been designed to prevent.

15 MR. HUME: Yes, and it is my respectful
16 submission that the material in the chapter on patents,
17 this would warrant no such opinion. This is the Director's
18 opinion which is sincerely held and as counsel for an
19 interested party I challenge that opinion and so, in my
20 submission, if he is basing it on material, not fact, that
21 that opinion is not warranted. I take exception to the
22 opinion and make the point I have no way of finding out
23 how that opinion was arrived at. The Patent Act of
24 Canada was intended to create many situations in which
25 monopolies exist and the compulsory licensing system was
26 not designed necessarily to prevent this situation. It
27 was designed, so far as our Act was concerned, to ensure
28 that processes relating to food and drugs would be used
29 and the public would get the benefit of the process
30 provided an appropriate licence fee is paid therefor and



1 there is no evidence before the Commission that this has
2 not, in fact, been accomplished.

3 I draw your attention to the evidence of
4 Mr. Michel which commences on page 296 and also the
5 table which was produced by the Manufacturers' Association
6 in their brief which you will find on page 1990 of the
7 transcript.

8 At page 257 the Director expresses the
9 following opinion:

10 "The control exercised over the manufacture,
11 distribution and sale of certain drugs
12 through patents has virtually eliminated
13 price competition in respect of such drugs
14 and has encouraged other forms of competi-
15 tion which, while possibly presenting
16 other benefits to the public, have resulted
17 in prices being increased rather than
18 decreased".

19 I think it is obvious from the evidence
20 of Mr. Thompson and from the brief of the Canadian Pharma-
21 ceutical Manufacturers' Association that there is a broad
22 sweeping statement doubted or disputed in some quarters
23 and likewise the subsequent opinion appearing in the
24 same section at page 467 that promotional activities
25 have been carried to extremes because of the control
26 exercised through patents. This is the opinion of Mr.
27 MacLeod, which he reiterated this afternoon and I do not
28 want to be taken by default that everyone agrees.

29 THE CHAIRMAN: I think we can say that
30 the Commission should not be taken as saying they agree



1 with all conclusions of the Director just because the
2 Director sets them out.

3 MR. HUME: Then I am making my point.

4 THE CHAIRMAN: The purpose of the hearing
5 is to get the evidence and the argument that it may be
6 advanced either in support of or in contradiction of the
7 factual information or conclusions reached by the Director.
8 That is what we are here for.

9 MR. HUME: And because there was nothing
10 in the material that in my respectful submission goes
11 in Section 42 there really was very little to do with
12 respect to that aspect of it and so we were into the
13 general realm which was perhaps inevitable in this case
14 of discussing the great many collateral subjects dealing
15 with the sale and distribution of pharmaceutical products.
16 With respect to the conclusion Mr. MacLeod reaches in his
17 Green Book and which he urged upon you this afternoon, the
18 promotional activities - I have forgotten his exact words
19 were shielded behind the shield of promotional literature
20 and so on. I submit Mr. Thompson and Mr. Antoft made
21 it clear that the promotional activities of their companies
22 had been found necessary in order to obtain their share
23 of the market. The evidence of Mr. Antoft commencing
24 at page 1403 makes it quite clear that if his company,
25 a small Canadian manufacturer, did not indulge in the
26 promotional activities described by him, that company
27 invited its own decline. He indicated that if they did
28 not spend about 35% of the gross sales on promotional
29 activities, the sales immediately dropped and the company
30 ran a grave risk of going out of business. Mr. Thompson



1 indicated subsequently the same position with respect to
2 his company which is one of the larger manufacturers in
3 Canada. The question of the control exercised through
4 patents in relation to this promotional activity does
5 not, in my respectful submission, warrant the conclusion
6 reached by the Director and I submit that evidence indicates
7 that it has very little bearing on it. Mr. MacLeod, in
8 his comments with respect to that, indicated that the
9 evidence indicated that these promotional activities
10 indicated a waste. Mr. MacLeod correctly quoted Mr.
11 Thompson and Mr. Antoft as indicating that they would
12 like it another way but it does not follow when he said,
13 and I wrote down his exact words, "These two men said it
14 was wasteful". I deny they said any such thing; I do not
15 think anything is wasteful for a manufacturer who is
16 trying to spend his dollars in a sensible way if it is
17 necessary, it may be undesirable from some points of view
18 but I do not think it is wasteful. I do not think any
19 manufacturer in Canada is deliberately spending money
20 unnecessarily. These people are much more experienced
21 than my friend and myself and they find it absolutely
22 necessary to do this in order to carry on.

23 That concludes what I have to say in my
24 general comments with respect to the Green Book. I
25 repeat my previous statement that it is the respectful
26 submission of my clients that this Green Book presents
27 the material which is presented there in a fair way and
28 there is nothing that is seriously disputed other than
29 that which they refer to in their own submission and it
30 would be repetitious for me to repeat.



1 I now want to take in the second phase of
2 my case with respect to the public hearings and quickly
3 to point out certain things that I consider of some
4 significance from our standpoint. As stated in our brief,
5 the Canadian Pharmaceutical Manufacturers' Association
6 welcomed the decision of this Commission to hold public
7 hearings. This Association expected that the public in
8 Canada would take advantage of the opportunity to express
9 their views and opinions and the Association looked
10 forward to the opportunity of presenting its case to the
11 public through the Commission hearings. It has been a
12 matter of some surprise and perhaps a little shock to
13 discover that in certain respects at least, the hearings
14 of the Commission have not attracted the large public interest
15 which they expected.

16 Let us look at the record; the hearings
17 commenced in Ottawa on July 4th and ran for three days.
18 At that time only two Associations came forward, the
19 Canadian Association of Consumers and the Canadian
20 Federation of Agriculture and neither actually made any
21 contribution to the real purpose of the hearings under
22 Section 42. Apart from Dr. Schechter, the remaining
23 witnesses were from Government departments and gave infor-
24 mation with respect to tariffs, the Food and Drug Direc-
25 torate, the Department of National Health and the Commis-
26 sioner of Patents.

27 In Halifax the Maritimes Federation of
28 Agriculture and the Halifax-Dartmouth Labour Council
29 were the only two Associations to come forward that were
30 not connected with pharmacy and in addition we had the



1 brief submissions of Drs. Reardon and Reid. The Provincial
2 Pharmaceutical Society presented a brief and the Department
3 of Public Health of Nova Scotia. It was said at page 416
4 that the Canadian Congress of Labour would present its
5 views but they did not appear.

6 In Winnipeg there were submissions by two
7 doctors, the Provincial submission from the same Canadian
8 Association of Consumers, a Provincial submission from the
9 Pharmaceutical Association, a submission from the Government
10 of Manitoba. In reading that evidence most carefully I
11 can discover no evidence dealing with the real purpose of
12 the inquiry. In Saskatchewan there was a submission by
13 the Government and the Provincial Pharmaceutical Associa-
14 tion and still no submissions had any bearing or real
15 purpose in the inquiry.

16 In Edmonton there was a submission by the
17 Government of the Province of Alberta, another submission
18 by the Canadian Association of Consumers and a submission
19 or statement by the Reverend Taylor and two other Associa-
20 tions.

21 In Calgary the Provincial Pharmaceutical
22 Association and a newspaper editor.

23 In Vancouver the same Canadian Consumers'
24 Association, the Elder Citizens' Association and the
25 Provincial Pharmaceutical Association.

26 In Victoria there was no submission at all
27 and the only thing to be dealt with there was a letter
28 from Dr. Walsh. There was one in Vancouver I have not
29 mentioned, that was the unfortunate submission of a man
30 who was mentally ill and could possibly have benefited by



1 the use of some of the diuretics.

2 In Montreal there were two submissions.

3 The Toronto sittings lasted two weeks and apart from a
4 pharmaceutical manufacturer and another brief from the
5 Canadian Association of Consumers, the Commission heard
6 evidence from the Hospital Association, the Canadian
7 Pharmaceutical Manufacturers' Association, Canadian Society
8 of Hospital Pharmacists, Canadian Pharmaceutical Associa-
9 tion and the Ontario College of Pharmacy and evidence from
10 Mr. J.R. Gilbert and Dr. Best. It is very respectfully
11 submitted that if only about six or seven doctors out of
12 a total of 11,000 come forward and if there be no French
13 language submissions from any of the French-speaking
14 groups in Canada and if there have been only about 10
15 Associations prepare and submit briefs, there is no
16 great public interest in this matter and the public has
17 largely ignored the sittings of this Commission.

18 Now, I summarize the entire hearings
19 without going into great detail by pointing out that in
20 my respectful submission, most, or practically all the
21 submissions made to the Commission have absolutely nothing
22 to do with the scope and purpose of this inquiry.

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1 As an example I ask the Commission to consider the
2 evidence presented by the Government of the Province
3 of Alberta. This evidence may fairly be summarized
4 by the four recommendations which they made which
5 appear on pages 866 and 867. The first is a proposal
6 that there be legislation to permit retail pharmacists
7 to switch from one brand of pharmaceutical products
8 to another. The second is a suggestion that there
9 be legislation to prohibit development of further
10 trade names. The third is a proposal for some sort
11 of professional publication to give information about
12 pharmaceutical products and the fourth is a proposal
13 that the medical code of ethics be somehow redefined
14 in order to remind doctors that they should have some
15 regard for the financial ability of their patients.
16 Not one of these suggestions has any practical use
17 in this inquiry -- not one of these suggestions relates
18 to a matter of evidence or even opinions as to whether
19 there are monopolistic situations or practices in
20 restraint of trade with which this Commission is
21 concerned. These submissions might better have been
22 made to the Royal Commission on Health Services.
23 A review of all the pages of the evidence by the
24 province indicates that it is entirely irrelevant to
25 the present inquiry.

26 Many times, Mr. Chairman, you reminded the
27 public through the public hearings that the Commission
28 was not concerned with the fact that the cost of
29 pharmaceutical products is alleged to be high. One
30 of these many references appears at page 1121.



1 Notwithstanding this fact, most people that appeared
2 before the Commission read briefs with respect to the
3 alleged high cost of the pharmaceutical products and
4 the problem of one of the Associations that appeared
5 in Edmonton seemed to be that they didn't have the
6 right to write certain prescriptions. What that has to
7 do with the matter under inquiry is difficult to see,
8 and it is my submission that an analysis of the
9 evidence submitted to this inquiry is largely of the
10 nature concerning which I have made reference. This
11 includes the brief submitted by my client the Canadian
12 Pharmaceutical Manufacturers Association. There being
13 no information or evidence which this Association could
14 give with respect to monopolistic practices or practices
15 in restraint of trade (there being none) the
16 Association's brief was intended to provide certain
17 background information and to examine some of the
18 opinions and generalities in the Green Book for the
19 assistance of the Commission in the event that the
20 Commission has or does hear evidence within the scope
21 of Section 42.

22 It can be said that a great many people got it
23 off their chest and said what they wanted to say in
24 public. All this, I might add, at considerable public
25 expense, but that is the way we do it and I do not
26 take issue with it. I leave it to the Commission to
27 weigh the evidence and I invite the Commission to
28 find that it has received no evidence whatsoever of
29 any practices or situations that fall within the
30 scope of Section 42 of the Act.



1 While these matters, therefore, are not within
2 the scope of the inquiry, one must take note of the
3 fact that certain statements have been made with respect
4 to a variety of subjects and I intend therefore to
5 dwell briefly on some of the general headings and to
6 make reference to the material. With respect to the
7 value of promotional material issued by the
8 manufacturers to the doctors in addition to the brief
9 of the Canadian Pharmaceutical Manufacturers Association
10 I refer you to the evidence of Dr. Schechter at page 250
11 lines 13-24.

12 With respect to the matter of the service
13 which detail men provide to the doctors with respect
14 to new pharmaceutical products, I refer you to the
15 evidence of Dr. Schechter at page 250 lines 20 - 22
16 and again at page 269 lines 4 -9. Dr. Reardon spoke
17 of this subject at page 366 line 22 and following and
18 again at 368 on to page 369. This evidence indicates
19 that Dr. Reardon believes that these men provide a
20 very essential service. You might also look at the
21 evidence of Dr. J.W. Reid at page 399; the evidence
22 of Dr. J.P. Gemmell at page 513; and the evidence of
23 Dr. F.B. Rodman at page 907.

24 It has been suggested to the Commission
25 that because of the large numbers of new drugs coming
26 on the market and the great wealth of information
27 with respect thereto, the doctors had a problem
28 with respect to this matter. Dr. Reardon at page
29 366 stated "I have no problem".

30 Interesting comments were made from time to



1 time with respect to the quality of drugs that are
2 sold only by their generic name and not identified with
3 a particular manufacturer by either a brand or a trade
4 name and in this regard the evidence of Dr. Schecter
5 at page 260 on to page 261 is interesting; the evidence
6 of Dr. Meisener at page 337 indicates that the drugs
7 manufactured by lesser known companies (without the
8 reputation of the established companies for quality) are
9 tested and assayed; Mr. J.M.R. Shaw of the Department
10 of Veterans Affairs has some comments at page 346
11 to 347 and Dr. F.B. Rodman in Edmonton had some comments
12 at page 900.

13 It has also been interesting to notice the
14 number of times that serious suggestions have been made
15 that there ought to be some sort of regulation or
16 legislation that will deprive the medical doctor of
17 his free choice to prescribe any drug by brand name or
18 by trade name if he so chooses. Not one of the doctors
19 that appeared before the Commission indicated that they
20 wanted this right interfered with in any statement
21 they made to the Commission and it is inconceivable
22 to me that any person in his right mind would seriously
23 contemplate that such a proposal was feasible. At
24 page 2822 it is indicated by Mr. Jules R. Gilbert that
25 his brief to the Ontario Select Committee has been
26 entered as an exhibit before this Commission. The
27 Commission will no doubt be interested to see that in
28 that brief there are two kinds of doctors. At page
29 20 of that brief there is described the indoctrinated
30 doctor and he is the one that has come under the spell



1 of the manufacturers and chooses to select a brand
2 or trade name pharmaceutical product rather than a
3 generic named product. These poor indoctrinated
4 doctors are afflicted with three things (a) inertia;
5 (b) lack of time to learn new names; and (c) the
6 opposition of the pharmacist. It is also interesting
7 to note there are two kinds of retail pharmacists.
8 There is the neighbourhood druggist and there is the
9 right thinking druggist. The right thinking druggist
10 is the man who applies his scientific background to
11 his daily occupation and he is the one that sells Mr.
12 Gilbert's products.

13 I submit with great respect that a
14 manufacturer who labels his product with a brand or trade
15 name, which name is widely advertised so that it may
16 be readily known to the profession is legally
17 responsible for the quality and purity of the products
18 which he sells. I also respectfully submit that one
19 who imports a pharmaceutical product under a generic
20 name and does not identify his product would only
21 escape legal responsibility for a harmful product if he
22 could not be identified.

23 THE CHAIRMAN: You don't mean that he is
24 not responsible, it would be difficult to prove it?

25 MR. HUME: Yes, I say might escape the
26 responsibility if he could not be identified.

27 A so-called generic manufacturer who
28 identifies his product with his name is exactly the same
29 as a brand name manufacturer and the name "Smith"
30 or "Hume" or "Gilbert" attached to pharmaceutical



1 products is exactly the same as the assigning of a
2 brand name and advertising the same. That there are
3 inferior products is obvious. The evidence of Dr.
4 Morell indicating that a certain percentage of the
5 products which they test are returned; the letter
6 from Flying Officer V.F. Bamber which appears on pages
7 1305 to 1307 in the transcript, in which he, as a
8 pharmacist connected with the Royal Canadian Air
9 Force, complains of copies of drugs which were being
10 purchased by the authorities for use by members of
11 the armed forces and their dependents with a list of
12 these drugs is further evidence. Any manufacturer
13 can have accidents in their manufacturing process and
14 if such accidents happen, the manufacturer is
15 responsible for any consequences that flow therefrom
16 and I suppose it is just as true in pharmaceutical
17 products as it is in any other, that there will always
18 be some who will try to cut corners and whose quality
19 standards are not of the best. Dr. Morell indicated
20 on cross-examination to me that he could not possibly
21 hope to test all products and to inspect all
22 manufacturing plants unless he had a largely expanded
23 staff and a considerably greater budget. It is
24 relatively easy to have an inspector in a meat packing
25 plant who can stamp beef as it comes off the assembly
26 line as "Canada approved" as Mr. Frawley has suggested
27 on more than one occasion. I would suggest that it
28 is impossible, without a terrifically large number of
29 people involved, to inspect and stamp every batch of
30 every pharmaceutical product that is intended for



1 human use.

2 THE CHAIRMAN: In that connection, Mr. Hume,
3 our meat packing industry consists of about 2,000
4 plants, and there are very few inspectors stamping
5 them?

6 MR. HUME: Perhaps so, but I would suggest
7 that a generic product of beef, and there are not
8 too many varieties of beef --

9 MR. FRAWLEY: Just Alberta beef and the
10 others.

11 MR. HUME: A great many people believe that
12 imported pharmaceuticals, (and by this I do not refer
13 to the raw materials from which pharmaceuticals are
14 manufactured in Canada but pharmaceutical products
15 in dosage form,) are tested at the border in some
16 way. The evidence before this Commission has
17 indicated quite clearly that this is not the case and
18 I submit that it is possible that low quality products
19 can enter Canada and be sold under generic names to
20 the detriment of the Canadian public.

21 I also cannot leave my reference to the
22 evidence before the Commission without referring to the
23 evidence of Mr. D. Romaine which appears in Volume
24 10 of the transcript commencing at page 1105. The
25 articles that appeared in the "Albertan" were filed as
26 an exhibit and at page 1122 Mr. Romaine said that
27 the purpose of coming before the Commission was to show
28 a concerted effort on the part of the retail pharmacists
29 and manufacturers to keep generic products out of the
30 market. Retail pharmacists and ethical manufacturers
will continue to fight the importation of inferior



quality pharmaceutical products into Canada. They will continue to use every weapon at their disposal to try to convince the Canadian public that their products are superior and should be used. The fact that practically eleven thousand odd doctors agree with them is a very significant matter. Now, Mr. Romaine is entitled to his opinion and I submit to the Commission that his opinion is not entitled to very much weight because in making these so called investigations he did not even check the D.B.S. figures and when he was asked by me why he had not done so, his answer was that he was no "tax expert". What taxes have to do with the D.B.S. figures I do not know, but it indicates the extent of his understanding of the subject. In any event I say he is entitled to his opinion and if he had expressed that opinion in moderate sensible English, that would have been one thing but I suggest, Mr. Chairman, that that exhibit is an example of journalism at its lowest -- he has used every trick of his trade from name calling and he even seeks to incite his readers by bringing in racial discrimination. The language is intemperate, is extreme and in a great many cases, it is nonsense. Most important of all, it does not contribute one iota to the problem with which this Commission is faced within the scope of Section 42.

CONCLUSION:

In conclusion, Mr. Chairman and gentlemen, I would remind the Commission that you have received a series of briefs giving the background and position of



1 the retail pharmacists across Canada. You have
2 received a brief on behalf of all of the Canadian
3 pharmaceutical manufacturers giving background and
4 information with respect to the industry in general.
5 You have also heard from two manufacturers. You have
6 been supplied with certain figures that have been
7 procured at very great expense for another forum but
8 which I trust will provide background and information
9 for your studies. I say with the greatest of respect
10 that you have not heard any evidence whatsoever that
11 would justify any finding that there are practices in
12 restraint of trade or monopolistic practices with which
13 you should be concerned. The variation of quoted prices
14 which appears at the table on page 580 is clear
15 evidence that there is no collusion. The Government
16 of Alberta complained in their brief about the wide
17 variation in prices. If the prices had all been
18 the same, we would have heard complaints about level
19 pricing.

20 I suppose the manufacturer just can't win
21 no matter what happens.

22 There are people in Canada and in the
23 United States who were dedicated to the belief that
24 there is something wrong in the pharmaceutical
25 manufacturing industry. These people are entitled
26 to their opinion and there always seems to be somebody
27 on a witch hunt. There always has to be a whipping
28 boy and it seems as if the pharmaceutical manufacturers
29 are the whipping boys of the moment. No doubt the
30 Commission is aware of the article that appeared in



1 the summer of 1960 edition of The Business Quarterly
2 published by the University of Western Ontario in
3 London, Ontario referring to the fact that Kefauver
4 and his Committee had made political hay at the
5 expense of the drug companies for a year or two. The
6 author states "If indeed these drug hearings are to
7 be duplicated in Canada, as it now appears, then let
8 us devoutly hope that our probers, politicians and
9 new media act in a considerably more responsible
10 manner than their United States counterpart". I am
11 very happy to say, Mr. Chairman, that this has been
12 done in Canada in the manner indicated by the author.
13 Then the author indicates that the pricing of any
14 product is a very complex affair and that it is all
15 too easy for the uninformed to talk about markups as
16 if they were profits; to ignore the ten products that
17 fail for every one that succeeds and to compare prices
18 of low priced imports in bulk with the retail prices
19 of small packages of branded products.
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/dpw

1 Referring them to the cry that has been
2 heard in Canada, the author states: "Such completely
3 unfounded and irresponsible charges, addressed to an
4 uneducated and emotional audience, constitutes passing
5 sentence before any evidence has been heard".

6 Mr. Chairman, Mr. MacLeod, having seen the
7 latest edition of the Reader's Digest which just came to
8 my home last night, December 1961, and having referred
9 to an article appearing therein, he selected a particular
10 quotation from the article. The heading of the article
11 is called "Kefauver's Inquisition", and it is the repro-
12 duction of two articles which appeared in Newsweek, and
13 it is a highly critical article of tactics in the United
14 States, which I am most happy to say have not been
15 repeated in Canada. The article indicates the slanderous
16 undertone of the inquiry, the way the questions are
17 framed, their design to create headlines, such as "When
18 did you stop beating your wife" questions which he said
19 were designed to make headlines in the press, and I
20 recommend the article to anyone who is interested in
21 reading these articles. The London, Ontario, Quarterly
22 says: "Let us realize that the drug manufacturers are
23 in business to make a profit, like any other businessman,
24 and that as long as they conduct themselves honestly and
25 responsibly there is nothing wrong with their making a
26 profit. While we look for possible abuses, let us also
27 look for the benefits which competition and individual
28 initiative have bestowed in terms of new products,
29 research, better distribution and productive efficiency.

30

Above all, let us realize that the key



1 issue here is one of freedom. Drug manufacturing has
2 never been considered a public utility in this country;
3 on the contrary, it has been left for private capital
4 and private initiatives to develop. And as long as this
5 is to be the case, we suggest that it is up to the
6 market place, not our legislators, to determine whether
7 drugs or any other prices are 'too high'".

8 Now, dealing, Mr. Chairman, very briefly
9 with some of the points dealt with by my learned friend
10 Mr. MacLeod, he makes the point in reading the judgment
11 he referred to by the Commissioner of Patents that royalties
12 which appear to be - I haven't seen the judgment - \$320
13 when the same quantity of the product could be sold at
14 \$53 at a profit. The judgment doesn't indicate that this
15 indicates
16 spread/that the licensing is falling down. I merely say
17 that this doesn't necessarily indicate that the royalty
18 has anything to do with it and that royalties are some-
19 thing over and above the cost of producing an article
20 which is intended to reward the author. The profits to
21 which my friend referred appearing in the Green Book have
22 perhaps been brought up-to-date - yes, brought up-to-date,
23 because it was in 1960. But they indicate rather graphi-
24 cally in this document which the Commission saw this
25 morning, and I merely note in passing that in 1960 the
26 total profit before taxes totals to 11%. That is as a
27 percentage of sales dollars and it is perhaps not too far
28 out of line with the figure that appears in the Green
29 Book, but it is perhaps more up to date. Mr. MacLeod
30 made the point - I am sorry I had some difficulty in
getting it down - but I think the point was as follows:



1 that the lack of excessive profits doesn't necessarily
2 mean that there are no excessive prices, because there
3 might be waste or extravagant expenses. I submit that
4 Mr. MacLeod - and the same is true of me - neither one of
5 us have been in business, but I just can't conceive that
6 anyone can seriously argue that businessmen who are
7 trying to promote the interest of their company and their
8 shareholders and their position would deliberately have
9 extravagant expenses or waste for the mere purpose of
10 cutting down their profits. It seems to me that Mr.
11 Thompson and his friends in cross-examination indicated
12 that they would like to do it another way, in regard to
13 promotion, they would like to spend the promotional
14 money on research, but they are required to do certain
15 things, and I don't think it follows that because 30% or
16 32% or 29% has been spent on promotion it necessarily
17 follows it is wasteful. Therefore it is my respectful
18 submission that you look at the overall picture.

19 My learned friend Mr. Frawley and I were
20 having a discussion about the inquiry that was conducted
21 in Ottawa and concluded in Ottawa recently with respect
22 to the movement of grain out West, and the railways
23 produced a very extensive cost study which cost somewhere
24 in excess of \$100,000 to prove what it cost to move so
25 many bushels of grain, and Mr. Frawley presented experts
26 from the United States and they presented their views.
27 It is my respectful submission that to try to pick out
28 the cost of a particular article you are making an
29 arbitrary decision which can be refuted as a matter of
30 opinion, and as Dr. Dixon said, you look at the entire



1 picture.

2 So I hope, Mr. Chairman, that the submission
3 made by the Association, the small part I have played in
4 this inquiry and asking the odd question have been helpful,
5 and I hope that the summation I have been able to make
6 will be of some assistance in proving the submissions of
7 the Association; and I repeat that, having carefully
8 reviewed every page of the transcript, and having
9 considered this matter very carefully, I submit to you
10 that there are no monopolistic situations or situations
11 of restraint of trade and that your report to the Minister
12 contains no such activity within the ambit of Section 42
13 which delineates your duty.

14 MR. MACLEOD: Mr. Chairman, may I make
15 one point. My friend spoke of the alleged mistake incor-
16 porated in the statement in the form of an old lie,
17 misconception about the expenses of Cyanamid. Now, the
18 statements are on page 59, that ten carloads of free
19 samples to about 142,000 physicians at an estimated cost,
20 for the drug alone, of two million dollars.

21 THE CHAIRMAN: Where is that, Mr. MacLeod?

22 MR. MACLEOD: It is about five or six or
23 seven lines above the starting of paragraph (f). Also
24 the second statement is not the same statement, it is a
25 statement sworn to by the President of Cyanamid and was
26 attempted to be corrected by Mr. Thompson.

27 MR. HUME: That is in advertising?

28 MR. MACLEOD: Yes. The other thing is
29 this: I asked Mr. Thompson where he obtained his informa-
30 tion, and he told me he obtained it by hearsay from an



1 official of the company in the States. I then asked him
2 what sample had been sent out, and he said he didn't know,
3 but at that time 15 to 160 milligram capsules of Aureomycin
4 were selling at \$25, and I think what happened was that
5 the reporter took the retail price, and the cost of the
6 company may very well have been \$180,000, but anything
7 that cost the company \$180,000 may very well cost the
8 public two million.

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1 MR. HUME: I agree my reference to that
2 page is in error. Mr. Thompson's evidence, I submit,
3 is no more hearsay than any official in any court of
4 law where an official comes and gives evidence. He
5 gets that information from company records, and I
6 say that a reading of that will indicate that he
got that from the books of the company.

MR. MACLEOD: If ten capsules were, in
fact, sent to 142,000 physicians, the cost would be
3½ million.

THE CHAIRMAN: At \$25.00?

MR. MACLEOD: Yes.

THE CHAIRMAN: That must have been very
early in aureomycin.

MR. MACLEOD: I suggest my calculation is
quite probable in view of the fact that if you recall
at that time -- this drug was extremely expensive at
that time -- I think a ten-grain package capsules
were used, and if you relate that to the figure of
120 which is given at --

MR. HUME: Are you trying to establish that
Mr. Thompson gave incorrect evidence?

MR. MACLEOD: I am not trying to establish
that Mr. Thompson gave incorrect evidence. He told
me he did not know, he did not say how many capsules
were used per doctor. It possibly did cost the
company only \$180,000.00, but that sold to the public
would undoubtedly have been worth \$2 million.

Now, there is just one further point. You
take the second stage, that \$20 million were spent



1 on advertising, which presumably included samples,
2 because at that time the purpose of making this
3 affidavit was to make it as great as possible. If
4 we accept that figure and divide it by seven, it gives
5 us a minimum cost of \$3 million per year, and this
6 was their initial promotion, which is usually a big
7 one; and I refer you to page 112 where the comments
8 of several companies are referred to. We asked
9 a number of companies whether it was their practice
10 to spend more on new products, and the answers differed
11 somewhat, but the general effect was yes. So if that
12 was the case, Cynamid would have spent \$7 million,
13 and it would have tapered down, but something of that
14 nature would have occurred.

15 THE CHAIRMAN: Are you stating in effect that
16 this statement of the President of American Cynamid
17 in 1955 dealt with the period of six or seven
18 years?

19 MR. MACLEOD: Yes, and his general business
20 knowledge as well that it is normal to spend a greater
21 amount on your initial promotions on a new product,
22 and even if we took the average we would get something
23 of the order of \$3 million a year. I think it is
24 normal to expect that in the initial year much more
25 than \$3 million would have been spent. The
26 information given to me by Mr. Thompson, while I
27 have every respect for Mr. Thompson, and I am not
28 suggesting for a moment that he was not speaking the
29 absolute truth, but when he told me the source of
30 his information and he --



1 MR. HUME: Mr. Wahn is coming tomorrow
2 morning.

3 THE CHAIRMAN: It is half past four. I
4 would think we should be able to finish tomorrow
5 all right.

6 We will adjourn until 10:00 o'clock tomorrow
7 morning, and if counsel have any preference for their
8 order of appearance they can settle it amongst
9 themselves.

10 ---Whereupon the hearing adjourned until Wednesday,
11 November 29th, 1961 at 10:00 a.m.



Ottawa, Ontario,
November 29th 1961

--- On resuming at 10 a.m.

THE CHAIRMAN: We will resume the hearing
this morning. Have you some comments, Mr. MacLeod?

MR. MACLEOD: There was some discussion
last evening on the questions I put to Mr. Thompson in
cross-examination, and while the discussion went along
the lines I indicated, I am reported as having said this
on page 1692:

"MR. MACLEOD: Well, just before we leave
that, the example which the Director cited
is obviously for the reasons stated
incorrect".

So, having taken that position at the time,
I am not prepared to argue along the lines I did yesterday,
and perhaps for the record it might be noted that the
reference taken from the Economic Report on Antibiotic
Manufacture in June 1958, issued by the Federal Trade
Commission, does confirm the fact that this information
came from a Ph.D. thesis, and the particulars were given
as follows: John D. McEvilla, "Competition in the American
Pharmaceutical Industry, Ph.D. Thesis, University of Pitts-
burgh 1957, Page 143".

THE CHAIRMAN: Have counsel decided in
what order they would like to speak this morning?

MR. FRAWLEY: I have something to say, sir,
but I thought yesterday's transcript would be ready, but
unfortunately, through no fault of the reporters, it is
not ready, and I have asked for a bit of it and there will



1 be something brought to me in a few minutes, so I would
2 rather see that first.

3 THE CHAIRMAN: Mr. Turnbull?

4 MR. TURNBULL: Mr. Chairman, we are not
5 represented here today by legal counsel, and I would wish
6 to sum up on behalf of the Canadian Pharmaceutical Associa-
7 tion, particularly from the viewpoint of the pharmacy
8 practitioners, although the Association does represent
9 all pharmacists in Canada, and consequently has as its
10 members the registered pharmacists in the various statutory
11 bodies across Canada. You have heard from many of these
12 constituent associations during regional and local hearings
13 across Canada. You have also heard from the Canadian
14 Society of Hospital Pharmacists and the Canadian Conference
15 of Pharmaceutical Faculties did indicate they would be
16 willing to provide you with information by letter if such
17 was thought desirable by you.

18 Our brief took some three days to present.
19 It includes some 117 pages and, as mentioned by Mr. Hume
20 yesterday, it follows along the line of many presentations
21 made before this Commission. It is somewhat non-specific,
22 but it did include a lot of background material, background
23 material which we felt was very necessary because there is
24 obvious public misunderstanding and possibly lack of know-
25 ledge or lack of acknowledgement of the profession of phar-
26 macy and of pharmacy practice as we know it in Canada.

27 Like other speakers we have been somewhat
28 disturbed by the public clamour. It was hard to believe
29 and almost shocking to note the public attendance at the
30 hearings in Toronto. We would have wished for something



1 much better from the public viewpoint.

2 I would express to Mr. MacLeod and to the
3 Director our congratulations for the very fine compilation
4 of information and facts and statistics as contained in
5 this Green Book. We mentioned this in our brief and we
6 truly believe it was a wonderful job. It must be very
7 difficult for a member of one profession to have to review
8 the many technicalities and, shall we say, the peculiari-
9 ties of another profession and at the same time take into
10 account all the facets of the industry which are connected
11 with that profession.

12 Section 42 relating to any commodity which
13 may be subject to trade or commerce and conditions and
14 practices related to any monopolistic practices in
15 restraint of trade was a very difficult thing for us to
16 deal with. As we pointed out in our brief, a drug pres-
17 cription is not an item of commerce. A drug prescription,
18 as you know, cannot be bartered, traded or offered for
19 sale except that it is the personal property of the person
20 for whom it is written and for whom it is completed.

21 In our brief we attempted to demonstrate,
22 and I believe quite well, that there is more to the
23 filling of a drug prescription than as referred to in the
24 Green Book in paragraph 52 -- the mere counting out of a
25 required number of items as ordered by a physician.

26 In some 17 points beginning at page 76 of
27 our brief we outline the various professional activities
28 and services connected with the dispensing of a prescrip-
29 tion. Later we made some comment relative to the extempo-
30 raneous compound of a prescription, and it would seem to



me it may be wise to make mention this morning of paragraph 105 in the Green Book, where it is indicated that it would be impossible for the practising pharmacist to add the various microscopic amounts required in some prescriptions and as precompounded or prefabricated in industrial preparations. However, I think any pharmacy practitioner would suggest that the word "impossible" be changed to "impractical" in modern pharmacy practice because it is a very well-known thing that for many, many years, to use one example, there were plenty of prescriptions ordered for, shall we say, a one-in-ten-thousand solution of strychnine. It used to be quite a favourite appetizer. I guess we have other appetizers now, and most certainly such dilutions are quite possible.

Later on in our brief we commented concerning the pricing guides, and there was some note made in our conclusions at page 109 where we indicated there are many dozens exist in Canada. Some are possibly given a degree of sanction or are used in contractual arrangements entered into between provincial, district or local associations, and, as you know, there is such a guide which has been formulated at the national level for use if and when such is required for contractual agreements.

It has been indicated to me since the time of presentation of our brief that possibly only 60% of the individual pharmacists in Canada make use of guides of any type or other, and then these guides, whether they are sanctioned or not, are often altered to meet the individual's own desires.



1 THE CHAIRMAN: Is there any evidence before
2 us that only about 60% of practitioners and pharmacists
3 use guides?

4 MR. TURNBULL: Regrettably I was unable to
5 gather definite information in time for our presentation,
6 but I have continued to make inquiries and that is, shall
7 we say, the closest figure I can determine from talking
8 with a lot of people in Association work and that type of
9 thing. Possibly some 60% of individuals use some type of
10 guide or other. We haven't been able to determine which
11 guides might be involved. Some are using American guides;
12 some are using a combination of American and other schedules
13 that are being used in some areas. Some will take the one
14 being used by a chain and gain knowledge of it in some way
15 or other and alter it for their own purposes. However,
16 they are all considered for my purposes as being a form of
17 guide -- a convenient guide.

18 THE CHAIRMAN: I was wondering how you
19 arrived at the 60%, because I didn't recall having heard
20 any percentage of it being mentioned in evidence before
21 us at all.

22 MR. TURNBULL: No. That is why I thought
23 possibly I should mention that this morning, that we had
2 24 attempted to gather that additional information. We had
25 attempted to gather it in time for our brief, but it was
26 not possible.

27 Reference has been made and was made by
28 Mr. MacLeod yesterday to the Canadian Pharmaceutical
29 Journal Price Book, and I believe Mr. MacLeod indicated
30 very correctly that this price book is merely a



1 collection of already published information. It is not a
2 directive. It is not given away. It is sold upon written
3 demand to pharmacists, physicians, hospitals, Government
4 departments and what have you. It possibly leads towards
5 a degree of stability in retail work, but certainly not
6 to conformity.

7 In paragraph 9 of the Green Book -- and
8 such was also indicated in the hearings in Vancouver --
9 it is indicated that there is additional evidence gathered
10 from the British Columbia Pharmaceutical Association
11 office as well as the office of the Ontario College of
12 Pharmacy. I know that this information and evidence
13 possibly is quite lengthy and quite extensive and might
14 take up one or two file drawers. We were somewhat
15 disturbed, however, that during the Vancouver hearings
16 it was, shall we say, intimated that this was evidence yet
17 to be produced, and we would certainly hope if this is
18 evidence for which there could be a counter argument we
19 would respectfully request permission to have the oppor-
20 tunity of making such counter argument when it is being
21 reviewed.

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1 In paragraph 15 of the Green Book it is
2 inferred, it is stated that an imported drug is
3 immediately questioned. I am not too sure what the
4 inference there is, I am not too sure by whom an
5 imported drug is immediately questioned. I would
6 hope, of course, that it is immediately questioned.
7 However, if the reference is that the pharmacy
8 practitioners immediately question an imported drug
9 just because it is an imported drug I would not wish
10 that erroneous idea to remain in the minds of the
11 Commissioners. The pharmacists, of course,
12 question a salesman and question his company and
13 particularly his finished products more so from
14 the idea that something, some unknown, is being
15 placed before them and they are being asked to under-
16 take its distribution upon the medical prescription.

17 On page 40 of our brief we make comment
18 concerning generic nomenclature and the filling
19 of prescriptions with generic name products. I
20 would recall to your minds that it is stated without
21 qualification in that paragraph that the profession
22 of pharmacy does not disagree with those who
23 advocate that physicians might best describe drugs
24 by their generic names. It is a pharmacist's
25 duty and professional obligation to interpret the
26 prescription desires of the doctor in the absence of
27 a physician's stated order by brand and/or manufactured
28 name. The pharmacist and only the pharmacist is in
29 the position which enables him to assume the
30 responsibility of the proper preparation be it brand



1 name or no brand in keeping with knowledge and the
2 required character of the drug, the reputation of
3 the manufacturers in their particular field and
4 coupled with that the known wishes of the physician
5 and his own knowledge of the individual patient.
6 Pharmaceutical excellence is his criterion. No two
7 brands of the same drug are necessarily the same nor
8 are non brands necessarily the same as brands. We
9 feel that could not be stated more definitely as a
10 policy statement on behalf of pharmacy practitioners
11 in Canada.

12 In other sections of the Green Book reference
13 is made, and this is paragraph 125 of the Green Book
14 on page 78, to failures of drug stores and I believe
15 that during some of the hearings possibly of this
16 Commission and possibly of the Ontario Select
17 Committee on Drugs there was some discussion concerning
18 the effect of the newer and larger so-called discount
19 houses on the small individual retail or community
20 pharmacies. I think it goes without saying that
21 the large are getting larger and there is a good
22 chance of the small disappearing. I can only say
23 this; what happens? What is to be the responsibility
24 of associations in protecting and in helping the
25 little fellow that is the private practitioner who
26 we have always considered to be the backbone of our
27 economy in Canada and who has a true investment in
28 our way of life. Regrettably these people turn
29 to their associations for guidance and assistance and
30 help and it could well be that associations such as



1 the Canadian Pharmaceutical Association could find
2 themselves in awkward positions at some future time
3 in our attempts to guide and to be of assistance to
4 the individual pharmacist practitioner who wishes
5 to maintain a way of life while bringing pharmacy
6 and its benefits to the communities, many of which are
7 very small in this vast country of ours.

8 I believe, to continue, that it was
9 clarified yesterday by Mr. Whiteley's comments when
10 Mr. MacLeod referred to the fact that I had indicated
11 that the cooperatives in wholesaling are more important
12 than indicated, I believe in referring you to page
13 54 of the Canadian Pharmaceutical Manufacturers'
14 Association brief where I said that rebates, as per
15 paragraph 456, are more widespread than it is
16 indicated in that particular paragraph of the Green
17 Book.

18 On page 96 of our brief we deal very
19 quickly with the coding of prescriptions and I wish
20 to thank Mr. MacLeod for the information he brought
21 to us yesterday. I must say it was a bit of a
22 shock to me to find that the Canadian Pharmaceutical
23 Manufacturers' Association was mentioned in one of
24 the bulletin services that are sold in Canada.
25 However, this matter is still of great historical
26 interest to me because I cannot find anything in
27 Association records, that is Canadian Pharmaceutical
28 Association records of anything, anything editorial
29 that would indicate where such coding ever began in
30



1 Canada and how it got started. We have only assumed
2 knowing that the coding, this particular code has
3 a national association of retail druggists background
4 in the United States, we can only assume that it has
5 gradually spilled over into Canada and become a
6 practice followed in Canada. I cannot find any other
7 information than that and most certainly nothing that
8 would indicate that is something that is advocated.
9 I can tell you I have looked into it further since
10 the Toronto hearings and find that such coding is
11 very rapidly disappearing and actual dollars and
12 cents are used on prescription copies. We, of course,
13 advanced some of the reasons and some of the ideas,
14 some of the philosophy behind such prescription
15 marking when we presented our brief which will be
16 found on page 96.

17 The great policy of price and pricing has
18 created a lot of public interest and as indicated a
19 one price situation would most certainly create many
20 more. The magnitude of prices possibly is of more
21 specific interest but it would appear that the
22 prescription dollar, the drug prescription dollar is
23 still very stable when related to the total health
24 dollar expenditure. There is a great individual
25 responsibility to buying drugs, prescription drugs
26 particularly and I think we all experience this.
27 No one wishes to be ill and also no one wishes to
28 have to pay out unexpected amounts of money for drugs
29 that they did not wish to buy in the first place.

30 In our brief we dealt at great length with



1 the comparison of retail, hospital, government and
2 institutional prices and we advocated and still advocate
3 the fact that one price for one quality and one
4 quantity is the only proper way in which to price
5 drugs; that is, one price level, not one price. We
6 assume that in future deliberations we would expect to
7 see an acknowledgement of the hitherto unpublished
8 and hidden costs and overhead related to government
9 and institutional buying as mentioned in our brief
10 more extensively. We say again that it is our belief
11 that it must, and we believe it must be assumed that
12 consumer prices are subsidizing the prices at which
13 governments and hospitals and institutions and similar
14 places are buying and contractual buying groups are
15 able to obtain the same drugs.

16 In our conclusion we made reference to the
17 fact that a comparison of today's prices of today's
18 drugs with yesteryear's prices and those drugs of
19 yesteryear are really not valid in that today's drugs
20 were not known yesterday; they are still with us, yes,
21 and they are still part of the overall drug cost
22 but regrettably the new tends to maintain the prices
23 at what we might consider would otherwise drop and as
24 the new replaces the old the new prices go into
25 effect.

26 I believe it must be agreed there are no
27 apparent factors at work to maintain any prices at
28 high levels with regard to identical products. Those
29 products over the years, since all the government
30 retail products must certainly range between 4.5 per



1 and five per cent on gross sales, have remained about
2 the same with gross increases of possibly not equal
3 to what might have been expected in relation to our
4 expanded economy, our expanded population, our better
5 wages, our higher standards of living over the course
6 of years particularly since the last war.

7 There have been claims and certain evidence
8 that drug prices in Canada are higher than many other
9 countries but as we point out, we have figures
10 concerning the average prescription -- we do not know
11 the content of the so-called average prescription but
12 the average prescription in Canada has for many years,
13 each year and every year, been something like ten
14 per cent to 15 per cent lower than the average
15 prescription in the United States. In this regard
16 I think that we should inject a note of caution,
17 shall we say; today's pharmacy practitioner is experiencing
18 more and more paper work, must exert more control from
19 a legislative point of view over the many drugs which
20 he handles on a day to day basis. During the past
21 two or three months there has been new legislation
22 which in some cases requires paper work to the extent
23 where some of the pharmacists in Canada have had to
24 hire additional staff to look after the paper work
25 involved in submitting reports to federal departments.
26 This, of course, I need not say costs money and
27 regrettably all this could have its effect on some
28 possible increase in the cost of prescriptions in
29 Canada.

30 Before I take my seat, sir, I would make one



1 or two comments relative to other briefs and other
2 statements that have been made. We did not before
3 and we do not wish this morning to make any mention
4 of some of the articles that have been written.
5 However, it was mentioned yesterday that -- possibly
6 not yesterday but in the past while -- possible we
7 should have made some reference to a series of articles
8 which appeared in the Calgary Albertan some months
9 ago.

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1 I would like it to be known that the
2 Canadian Pharmaceutical Association would prefer not to
3 lower itself to the point where it is necessary to answer
4 such undisciplined sensation-seeking statements. We feel
5 that such statements were not in keeping with editorial
6 responsibilities and obligations normally assumed by
7 persons who have knowledge of the moral prerogative of
8 the fourth estate. We have been most appreciative of
9 the co-operation of the press generally. We feel that
10 these gentlemen work with great ability, and they are to
11 be admired for the way in which they can cover a variety
12 of subjects, all in the course of their duties during one
13 day, or the course of a week or more.

14 We have not indicated in our brief another
15 point, but I did ask your permission to ask a few ques-
16 tions following the presentation of Mr. Jules Gilbert in
17 Toronto, and I would like it understood, gentlemen, that
18 there is no animosity between myself and Mr. Gilbert, and
19 I had discussions immediately following that particular
20 session actually to attempt to clarify with him just
21 exactly what the problem was that he had seen fit to make
22 mention of my name in particular in his brief, and it was
23 indicated to me that really there was nothing to be
24 discussed, but that he felt in view of some of the cross-
25 examination at the Ontario hearings that he must make
26 mention of my name in his brief. However, I believe it
27 should be clarified that as an Association, and as an
28 individual who is the senior officer of the Association,
29 the senior permanent officer of the Association, we could
30 hardly give much encouragement to a person or a company,



1 or anyone else, who has chosen to gain by statements
2 which we assume to be unfounded, made against many pharma-
3 ceutical practitioners in Canada, pharmaceutical practi-
4 tioners generally, against their Association, and speci-
5 fically against certain officers of the Association. We
6 have not given any acknowledgement, and we have not made
7 any statements of any other nature, particularly of a
8 derogatory nature.

9 I was pleased that I had the opportunity
10 of being in Ottawa when the first brief of the Canadian
11 Association of Consumers was presented. I was disappointed
12 that, because I am a consumer, they did not come to me
13 and ask what I thought of it, but I think that a group
14 such as that is to be congratulated for appearing before
15 a public forum of that nature. Of course, I was very
16 tempted to say to that group that I read wherein the
17 United States expenditure on drugs is only one-sixth of
18 consumers' expenditure on trading stamps. I would hope
19 that that has some significance in that trading stamps
20 seem to be quite the thing here in Canada to be acknowledged
21 and to be condoned.

22 Also I was a bit surprised when the
23 Canadian Federation of Agriculture saw fit to comment on
24 a subject such as drugs, but I think they are to be
25 commended because they do represent a very significant
26 portion of the population, a portion of the population
27 which I, as a Saskatchewanite, shall I say, am quite
28 familiar with.

29 It is interesting to note, and I take these
30 figures from the September 1960 issue of the Journal which



1 we presented as an exhibit, it is interesting to note
2 that agriculture subsidies during 1958 almost equalled
3 Canadian expenditures on drugs ---

4 THE CHAIRMAN: I am wondering, Mr. Turnbull
5 if you attach any significance to that similarity?

6 MR. TURNBULL: I think so sir. The signi-
7 ficance I attach to that is the clamour and the many words
8 that have been said about the great expenditures that
9 have been made on drugs in Canada.

10 THE CHAIRMAN: Is there any reason why they
11 should be the same?

12 MR. TURNBULL: No, there is no reason.

13 THE CHAIRMAN: Is there any reason why
14 they should be different?

15 MR. TURNBULL: It just so happens that it
16 has been indicated that our agricultural subsidies require
17 increases, and there are those who can justify such
18 demands, and it did appear to me, and to many of my
19 colleagues, to be rather strange that an Association which
20 represents those who feel that greater subsidies are
21 required, and certainly I am familiar with them as being
22 born and raised in the West, that that Association would
23 fail to acknowledge drug prices, or at least drug expendi-
24 tures, in Canada, are not even as great as the subsidies
25 by the Federal Government to agricultural products in
26 this nation. That was merely a comparison.

27 THE CHAIRMAN: The difficulty that I have
28 is in seeing any reason for comparing them. We have
29 nothing to indicate whether they should be more or less,
30 or anything else.



1 MR. TURNBULL: Well, it is hardly a subject
2 of interest to this Commission. However, pharmacy, Mr.
3 Chairman and Commissioners, has no quarrel with these.
4 I merely put that statement in to give an indication of
5 the levels of expenditures in Canada as they are known
6 to us.

7 We have expressed commendation to the
8 Director and those who prepared this report. During the
9 course of these hearings we have gained a new admiration
10 for the processes of Government and the diligence of
11 those who are charged with the responsibility of acting
12 on behalf of Government as servants of the public.

13 Most certainly we wish, sir, to congratulate
14 yourself and the Commissioners for the high level of
15 conduct of these proceedings. There has been no over-
16 glamorization of the proceedings and the information
17 arising therefrom. There has possibly been many disappoint-
18 ments in view of the fact that not all who might possibly
19 come forward have come forward, but I feel that these
20 public sessions have enabled, or have given, the public
21 an opportunity to sound off all the ideas that they have
22 relative to drugs and drug distribution in this country,
23 and I feel too that it could not be over-emphasized that
24 the information brought before the Commission would indi-
25 cate that nothing in contravention of Section 42 has or
26 is taking place in drug circles in Canada.

27 Before sitting down, sir, I would offer
28 again the assistance of my office and the Association
29 which I have the privilege of representing. If there is
30 any further information as you delve through the many



1 pages, and you gather your report together, if there is
2 any further information that we might provide, we would
3 be pleased to have the opportunity of attempting to do so.

4 We will, within the next few weeks, be
5 starting to conduct our annual survey of retail pharmacy
6 operations, and we are planning to expand the questionnaire.
7 If there are any points which you feel would be of interest
8 to the Commission to bring out additional information of
9 interest to the Commission, we would be very pleased to
10 attempt to gather such at that time, and now, as I take
11 my seat, I would express my thanks and appreciation of
12 the Canadian Pharmaceutical Association for the opportunities
13 which you have presented to myself, our constituent asso-
14 ciations, and my colleagues, to appear before you.

15 THE CHAIRMAN: Perhaps I should say, Mr.
16 Turnbull, that it is the duty of this Commission to seek
17 to get all the factual information it can concerning the
18 inquiry it is conducting, and on the basis of the informa-
19 tion to analyze whatever may be disclosed by that informa-
20 tion. That is what we are attempting to do. We try to
21 give people an opportunity to speak their piece. We do
22 not feel that that is anything for the subject of commen-
23 dation. We feel that that is our job.

24 We do appreciate very much your offer to
25 provide any additional information which the Commission
26 may feel is desirable which may be within your power.

27 MR. FRAWLEY: Mr. Chairman and members of
28 the Commission. There has been a great deal of comment
29 with regard to the appearance of myself before this
30 Commission as counsel for Alberta. I do not propose to



1 take a great deal of time discussing it, but I do want
2 to very briefly put into the record the facts and circum-
3 stances which in my submission at least have made this
4 particular investigation under Section 42 of the Combines
5 Act something somewhat different than the ordinary investi-
6 gation that this Commission has conducted in the past.
7 I know that essentially it will reduce itself to a report
8 under Section 42, just as every other inquiry of this
9 sort has resulted in a report under Section 42, but the
10 circumstances under which the Commission embarked on its
11 inquiry is what I am concerned about, and all I want to
12 do is just put into the record two or three references.

13 I find that on the 3rd of May, the Minister
14 of Justice, in the House of Commons, and I am reading from
15 page 4278 of Hansard of that day, made a reply to a
16 question put to him by Mr. Howard, who is, I think, the
17 Member from a British Columbia constituency, and at that
18 time Mr. Fulton said, and I will not read the whole of
19 what he said, and it certainly can be read by the Commis-
20 sion and others, and he said this: "I am informed that on
21 receipt --". The question was, what persons had received
22 copies of the, I shall call it, the Green Book: "I am
23 informed that on receipt of the volume of material compiled
24 by the Director, the Commission invited submissions and
25 representations from drug firms from which the Director
26 had received information, from trade organizations, public
27 health and welfare groups and from other organizations
28 and individuals who might be expected to be interested in
29 the matters involved in the inquiry." And then further
30 on he said: "The volume containing the material compiled



1 by the Director has not been published by the Commission,
2 but in order to assist in the preparation of submissions,
3 copies of the document have been made available to the
4 interested parties for this purpose". At that time the
5 Minister of Justice took the position that he would not
6 table the Green Book, but then, on the 14th of June, Mr.
7 Fulton made another statement, the Minister of Justice
8 made another statement, and without reading everything
9 that he said, he said: "The Chairman --", meaning yourself,
10 sir, "--has come to the conclusion that public hearings
11 in both these cases will serve the public interest.

12 In view of this fact I am now in a position
13 where I consider that I am able to table the statement of
14 materials in the drug inquiry, and I do so now". And
15 then, on that same day an order was made by the Restrictive
16 Trade Practices Commission, over your signature sir, and
17 I will only read a part of it: "I have received from
18 several parties interested in the inquiry, strong objec-
19 tions to hearings being held in public. I have also
20 received various submissions urging that hearings be
21 public. All representations made to me have been care-
22 fully considered, and I have come to the conclusion that
23 in this inquiry the public interest would be best served
24 by public rather than private hearings. I therefore order
25 that all hearings before the Commission in this inquiry
26 shall be conducted in public".

27 Now, all I want to say further than that
28 is that when I look at Section 42 of the Combines Investi-
29 gation Act, I find sub-section 1 says that: "--- and for
30 the purposes of this Act any such inquiry shall be deemed



1 to be an inquiry under Section 8". Then sub-section 2
2 says: "It is the duty of the Commission to consider any
3 evidence or material brought before it under sub-section
4 (1) together with such further evidence or material as
5 the Commission considers advisable and to report thereon
6 in writing to the Minister ---". Now, therefore, it
7 becomes an inquiry under Section 8, and that, of course,
8 is for the purpose, I take it, of incorporating into a
9 Section 42 inquiry those sections of the Act which lay
10 down the procedure and the obligations and the duties in
11 connection with an inquiry under Section 8, and I only
12 want to read one bit of that.

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1 And that is in Section 18, subsection 2.

2 "Upon receipt of the statement
3 referred to in subsection (1), the
4 Commission shall pick a place, time
5 and date at which argument in
6 support of such statement may be
7 submitted by or on behalf of the
8 Director, and at which such persons
9 against whom an allegation has been
10 made in such statement shall be
11 allowed full opportunity to be
12 heard in person or by counsel."

13 When I look at that, sir, and find a statement
14 has been given to a person against whom such an
15 allegation has been made and those persons are entitled
16 to be represented by counsel and to argue and ask
17 questions, I must say that I find that to be quite
18 a different kind of inquiry than the one that was made
19 -- and I may say was eminently proper to do it -- it is
20 a different kind of inquiry than was made in connection
21 with the investigation into drugs.

22 THE CHAIRMAN: I might point out that apart
23 from these hearings being heard in public, that is
24 the procedure we follow under Section 42.

25 MR. FRAWLEY: Yes, sir, and I am certainly in
26 the hands of the Commission.

27 THE CHAIRMAN: We notified people we felt
28 were concerned in the particular problem.

29 MR. FRAWLEY: But I did not know or feel or
30 understand that in those inquiries, in the many



1 inquiries that you have had under Section 42 the
2 statement of material --

3 MR. WHITELEY: Mr. Frawley, there have not
4 been many inquiries.

5 MR. FRAWLEY: Well, I am very glad to know
6 that. Maybe we are making some ground in setting
7 down some procedure for inquiries to follow. But I
8 suggest that the report that the Director made and
9 handed to the Commission was not laid on the table
10 of Parliament, it wasn't sent to the Minister of
11 Health in the Province of Alberta or British Columbia
12 or any other province. I simply point those things
13 out as indicating -- why I am saying this -- just that
14 I have been expected to come here representing the
15 Province of Alberta and the Premier of Alberta and
16 through him, only referring to those gentlemen in their
17 representative capacities, whose legislature passed
18 a resolution that the cost of drugs to the people of
19 Alberta was too high and they welcomed an inquiry, and
20 we are bound by Section 42 of the Combines Investigation
21 Act. I make no apologies for being here. I must
22 say that not only have I felt myself welcome, I have
23 felt, in view of some of the things that were written
24 down on the first page of the statement of material,
25 I felt not only welcome, I want to say that I feel
26 I have had the indulgence of the Commission in a great
27 deal of the positions and following up of the positions
28 I have taken throughout, and that indulgence I hope
29 I have not taken advantage of or that it has given
30 me any false conclusions, led me to any false



1 conclusions. I felt that this particular inquiry
2 into the cost of drugs, because it has aroused some
3 public interest and it has resulted in anguished
4 outcries, and because of that I feel that the
5 Commission has been -- I won't say have been glad to
6 have me here --

7 THE CHAIRMAN: I think we may dispute that.

8 MR. FRAWLEY: I feel that the indulgence
9 granted to me indicates -- and that is the comfort I
10 take from it, that this is an inquiry of a somewhat
11 special nature and that the Commission is interested
12 in the insistence that I have been making throughout
13 the inquiry that there is too great a spread between
14 the cost and ultimate selling price. I have said
15 that because -- and even my good friend Mr. Hume
16 yesterday in his summing up -- I didn't seem to
17 understand it, but I was in the wrong place and my
18 frustration was due to the fact that I found myself
19 in a forum, but technically I had no right to be in,
20 I had nothing to put forward particularly to the
21 Commission, and that was my frustration. That wasn't
22 my frustration at all. My frustration was being
23 denied direction to the Cynamid Company when they
24 were on the stand to give us a breakdown, give us
25 the price spread between the importation into Canada
26 and the selling price here.

27 I want to go through Exhibit T-5 for a few
28 minutes that I filed yesterday, because I have filed
29 this for two purposes. I have filed it to show
30 the spread -- incidentally, I don't know why the



1 multigraphing company put three staples on top of
2 this; it is always difficult to handle those things.
3 Probably if you just ripped off the two staples you
4 could handle the document a little better. I have
5 filed this to show what I regard as the large spread
6 and, secondly, to help me establish the point I
7 referred to in Calgary, and that is the absence of
8 competition in the retail market, the presence of
9 keen competition when they are supplying hospital and
10 government institutions, and the cross-subsidization
11 which occurs there.

12 First of all, just calling your attention
13 to the spreads, and I will take representative drugs
14 and prices, and I start with Abbott's Erythrocin.
15 On page 2 you will notice the exhibit has been
16 divided into antibiotics, the first three pages deal
17 with antibiotics, page 4 and page 5 deal with
18 corticosteroids, and pages 6, 7 and 8 deal with
19 tranquilizers. Looking at page 2 you will find
20 there that the manufacturer's cost -- now, the
21 manufacturer's cost is the figure which appears in
22 the Green Book, and I am not going to stop to make
23 apologies for it at all -- it is the price at which
24 the raw material is imported into Canada; in some
25 instances it is the finished material, in some
26 instances the tablets have been imported.

27 THE CHAIRMAN: Do you mean the cost of the
28 material or the cost to the manufacturer of having
29 ready for sale a finished product?

30 MR. FRAWLEY: Let's look at what page 177



1 says about Abbott and the erythromycin. That is the
2 generic name; Abbott's name is erythrocin, and paragraph
3 304 says:

4 "One dosage form common to all
5 three firms is 250 mg. tablets (of
6 erythromycin stearate). Two firms
7 reported finished package costs
8 for the small sized package (24 or
9 25 tablets) as \$1.25 - \$1.28 and of
10 the 100 tablet package as \$4.96 -
11 \$5.02".

12 Now, that is the basis for my figure of
13 \$4.96 to \$5.02, and that goes immediately from \$5.00
14 to \$47.70 on the retail shelf.

15 I find the next item is Merck's cathomycin,
16 and that goes from \$6.91 a hundred to \$60.45 a hundred.
17 I find that Bristol's tetrax - and that is on page 3,
18 because Bristol you will find at page 169 of the Green
19 Book imports tetracycline at \$140.00 a kilogram, and
20 that works out at \$3.50 a hundred, and therefore they
21 are going from \$3.50 to \$47.84 a hundred.

22 Now, I want to come back afterwards and
23 call your attention to the price to the University
24 Hospital, because what happens when competition begins
25 to work.

26 I will pass on to Parke-Davis' chloromycetin
27 on page 3, and I find there that Parke-Davis imports
28 the chloramphenicol -- I better look at the page --
29 yes, chloramphenicol is manufactured by Parke-Davis
30 and Fine Chemicals under a compulsory licence under



1 Parke-Davis' patents, and the reported cost of
2 manufacture is of the order of \$90.00 per kilogram.
3 Fine Chemicals' selling price to other manufacturers
4 is \$200.00 per kilogram plus royalty. That is
5 something else again, but I am just looking at the
6 statement in the Green Book in which I am taking, and
7 which I may say I feel justified in taking; there has
8 been no rebuttal by Parke-Davis, so I am taking the
9 figure of \$90.00 per kilogram, and that means the
10 cost of the material in the finished form comes to
11 \$2.25 a hundred. Now, it starts there and it is
12 priced at \$39.40 in the shelves of the premises of
13 the retail pharmacists.

14 Now, I go to page 4 and look at the
15 corticosteroids, and I find that we have no manufacturer's
16 costs because, as the Commission knows, the Director
17 did not go into -- and I am looking at page 4, sir --
18 the Director did not deal with corticosteroids, and
19 so what I have done, I have put down for the
20 Commission's information the passage from the report
21 of the Kefauver Committee which I have reproduced on
22 page 5 of the exhibit, and I quite appreciate, but
23 that at least is what the situation is in the United
24 States, and the Commission will give such importance
25 and such weight to it as the Commission thinks
26 proper.

27 "On a per tablet basis, the
28 consumer using either prednisone or
29 prednisolone bearing the brand name
30 of one of the major pharmaceutical



1 firms will pay approximately 30
2 cents for a pill which is sold
3 to the druggist for some 18 cents
4 and which can be produced for
5 1.5 cents or less. An arthritic
6 patient will frequently remain
7 for long periods on a dosage of
8 about 100 of five-milligram tablets
9 a month; thus he pays \$30.00 a
10 month for his medicine, for which
11 his druggist paid around \$18.00
12 but which cost around \$1.50 to
13 produce."

14 Now, I go back to the hospital prices and
15 I go to tranquilizers, and I find that Poulenc's
16 largactil costs 13 1/3 cents for a hundred but it goes
17 on the retailer's shelf to be sold to the consumer
18 at \$8.90 list. What it sells for to the mental
19 institutions in Alberta is something I will touch on
20 in a moment.

21 I go to Wyeth's sparine, and I find that
22 the cost is 9 1/2 cents per hundred and it goes on the
23 retail shelves at \$5.25 for 50 or \$10.50 for a
24 hundred.

25 Schering's trilacon has a cost of \$5.10
26 per thousand, and it goes on the retail shelves to
27 be sold at \$8.60 per hundred or \$86.00 per thousand.

28 Smith, Kline and French's stelazine has
29 a starting cost of \$1.15 a thousand, and that is a
30 tablet which, according to the information in the



ANGUS. STONEHOUSE & CO. LTD.
TORONTO, ONTARIO

Frawley

3165

1 Green Book, is not made in Canada at the date certainly
2 of the Green Book report, and that is one milligram
3 dosage.

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1 That is the one-milligram dosage. It has a cost to S.K.F.
2 of \$1.15 per 1,000, and it is put on the retail shelves
3 at \$4.75 for 50, or \$95 for 1,000.

4 I pass to page 7, and I would just like to
5 take a look at Sandoz' Mellaril which, according to the
6 Green Book at page 201, has a manufacturing cost of \$33.40
7 a 1,000, but its list price is \$250 a 1,000 using \$12.50
8 for 50. It sells, of course, at a good deal less to the
9 hospital or to our institutions, and we will deal with
10 that in a moment.

11 Pfizer's Atarax, which you will find at
12 the top of page 7, has a starting cost to the manufacturer
13 of 43¢ for 100, and the list is fixed by or suggested by
14 -- it comes from the manufacturer, and he chooses to say
15 that the public should pay \$6.16 for this 43¢ article.

16 Wyeth's Equanil is on page 8, and there
17 you will find that a drug that has cost the manufacturer
18 18¢ for 50 goes on the retail shelf at \$5 for 50, or \$1.80
19 for 500 -- \$1.80 being the manufacturer's cost of 500, and
20 that goes from \$1.80 to \$43.75 if you are using the 500
21 package.

22 Those are the spreads, as I call them;
23 those are the spreads which I wished to have a breakdown
24 of, and these are the spreads which I very respectfully
25 put to the Commission that the Commission must investigate.
26 The Commission must say, in my respectful submission, to
27 Smith, Kline and French, "Will you please explain to us
28 why you are asking \$95..." -- and I am not using \$95 to
29 be dramatic; I am using it because the 1,000 package is
30 the package which the Director has used, and that is why



1 I am using the 1,000 package in my references to Stelazine.
2 I say this Commission must say, before the report to the
3 Minister is made, to S.K.F., "You must come before us;
4 you must show us everything that goes into the difference
5 between \$1.15 a 1,000 and \$95 a 1,000. You must show us
6 how much of that is needed to package -- how much of that,
7 whether needed or not, is spent to package; what is the
8 expense of the detailmen; what is the expense of the
9 direct mail and the free samples? How much do you charge
10 in the \$95 for research -- or, as much of the \$95 as you
11 obtain?" I am quite aware when I say "of the \$95" that
12 Smith, Kline and French does not get that, but, how much
13 of what Smith, Kline and French get, which is a discount
14 of \$95, is spent on research, and then, after all the
15 expenses have been tabulated, how much profit is left for
16 Smith, Kline and French? That to me is the situation
17 which must be developed by the Commission before they
18 can say whether or not the cost of drugs is justified,
19 or whether they can say that there is an absence of an
20 abuse of the monopoly position or an absence of the
21 restraint of trade. I want to develop that now when I
22 come to the second phase of the value of these figures to
23 the Commission, and that is the question of cross-subsidi-
24 zation.

25 THE CHAIRMAN: We are concerned, Mr.
26 Frawley, not simply, as I have said many times, with
27 whether the cost is high, whether the price is justified,
28 but whether it is not justified because of certain things.

29 MR. FRAWLEY: Yes, that is right.

30 THE CHAIRMAN: There may be other reasons



1 why it is high.

2 MR. FRAWLEY: Let me put this question to
3 you: how can Smith, Kline and French sell a \$1.15 article
4 for \$95 if there was an absence of the things that
5 Section 42 prohibits, if there was present the ordinary
6 free working of the discipline of the market place, as
7 the Edmonton Journal called it, or the ordinary working
8 of the competitive forces in our society? I put it to you
9 that is not just a rash conclusion of mine. I say that
10 is for this Commission to decide. It is for this
11 Commission to ponder and say that Smith, Kline and French
12 imports an article for \$1.15; it puts it on the market
13 at \$95; it gets \$57 from the retailer, and if it is sold
14 to the wholesaler, in Edmonton in any event, it gets
15 something less -- I have shown it in column 6 on page 6.
16 And, it gets something less if it is sold to the University
17 Hospital -- \$2.94 a 100 in lots of 5,000; and \$54 a 1,000
18 when sold to our Provincial mental institutions -- that
19 is, the 5-milligram dosage in 25,000 lots. How does
20 Smith, Kline and French -- and I am not at the moment
21 discussing the prices to the University Hospital or to the
22 Provincial mental institutions, because there I say
23 different factors are working, but stopping at the price
24 that is charged the retail pharmacist -- \$57 a 1,000 for
25 this \$1.15 article, I put it to the Commission that it is
26 the Commission's obligation, which I am quite confident
27 the Commission will not shirk and will examine very
28 closely -- and in my respectful submission it is the
29 Commission's obligation, because the Commission wants to
30 know whether there is or is not a presence of these



1 conditions discussed in Section 42, and what the Commission
2 must say is, "How could those prices be charged? How
3 could \$57 be charged to the retailer or \$95 to the consumer
4 on this \$1.15 article if there was not an abuse by Smith,
5 Kline and French of its monopoly position, or if there
6 were not something in the nature of some restraint of
7 trade. If you ask me what was it, I can't say any more
8 than that, because I have been left on the fringes of
9 this discussion, and I am accepting that situation. I
10 realize why. I, therefore, have to leave it to the
11 Commission, after the Commission looks at the whole story
12 of Smith, Kline and French's Stelazine, and the Commission
13 looks for itself at the build-up from \$1.15 to \$95 or
14 \$57. It is my respectful submission after you have
15 looked at that I would think you would find it difficult --
16 you would have to say -- and I want to deal in a moment
17 with what Mr. Isaacson said in Toronto -- you would have
18 to give some consideration to what Mr. Isaacson said,
19 which was, "We buy at what the manufacturer charges".

20 THE CHAIRMAN: You will correct me if I am
21 wrong, but does your argument go this far: that in your
22 submission the single fact of a big spread between the
23 cost of the finished product in the hands of the manufac-
24 turer and the price at the retail shelves should be taken
25 by the Commission as proving there must be some abuse of
26 some monopolistic position?

27 MR. FRAWLEY: You say, sir, what does it
28 prove? I say you must examine that spread.

29 THE CHAIRMAN: Do you mean we must take
30 that as proving it, or should we not look for some



1 evidence apart from the price itself?

2 MR. FRAWLEY: Well, first of all, you have
3 no evidence from Smith, Kline and French -- not at all.

4 THE CHAIRMAN: Not from Smith, Kline and
5 French?

6 MR. FRAWLEY: I am talking at the moment --
7 because after all, the Commission's work is just a
8 succession of individual cases making up the whole, and
9 at the moment I am picking out Smith, Kline and French's
10 Stelazine. When I call your attention to spread to
11 start with -- just the figures alone -- and they are true
12 figures, there is no speculation about it, because that
13 is the figure in the Green Book which Smith, Kline and
14 French has not seen fit to deny. When you add that to
15 the situation generally in connection with the sale of
16 drugs by a manufacturer -- and I don't think anybody could
17 have put it clearer than Mr. Isaacson in Volume 23 at
18 page 2984:

19 "MR. FRAWLEY: What I am getting at, Mr.
20 Isaacson, is I would like to know to what
21 extent you ever bargain with your supplier
22 for a better price of these prescription
23 drugs, and I am limiting myself again to
24 the three I mentioned?

25 MR. ISAACSON: There is no bargaining.
26 Somehow to us these particular products,
27 or even any of these products, any products
28 we might use in the drugstore, do not lend
29 themselves to bargaining.

30 MR. FRAWLEY: In other words, without using



1 the word offensively, you are a captive
2 market for the manufacturer of its higher
3 cost drugs?

4 THE CHAIRMAN: The answer is 'yes'?

5 MR. ISAACSON: Yes.

6 MR. FRAWLEY: From what you have just told
7 me, you are really more captive even than
8 the patient is even captive of the pharma-
9 cist.

10 MR. ISAACSON: We cannot question the
11 price which the manufacturer charges us
12 for his product.

13 MR. FRAWLEY: And you don't question it
14 and you pay the manufacturer's price?

15 MR. ISAACSON: Whatever he charges".

16 While I am dealing with that, I might just
17 as well deal with it now, and I want to call your attention
18 to the evidence in Calgary in Volume 10, and there Mr.
19 Maday, who is the chief pharmacist at the University
20 Hospital in Edmonton, the assistant business manager of
21 the hospital, and a high officer in the Canadian Pharma-
22 ceutical Association -- and there I said to him at page
23 1054 of Volume 10:

24 "Without again making any allegations
25 I ask you whether or not the price which
26 the retailer pays was in any sense a
27 hammered-out price, the result of
28 bargaining between yourself as a buyer
29 and S.K.F. as a seller?

30 MR. MADAY: No.



1 Then I said, at page 1055:

2 "--- the Edmonton Journal of 16th June
3 of this year had an article which was
4 headed Authoritative Inquiry Imperative.
5 I will only read one sentence. 'The
6 object of this hearing, of course, must
7 be to develop remedial measures which
8 would return the drug industry to the
9 normal discipline of a market place'.
10 That is an expression used many times.
11 It struck me in this connection, do you
12 think there is any normal discipline of
13 the market place in the sale of Stelazine
14 by S.K.F. to the retail drug trade?
15 MR. MADAY: No, there isn't."

16 Now, with an absence of the working of the
17 ordinary forces of competition, with a captive market --
18 and you can't be any clearer than that; there has been
19 no attempt by the manufacturers to say Mr. Isaacson
20 doesn't know what he is talking about or that Mr. Maday
21 doesn't know what he is talking about -- therefore the
22 Commission is in the happy position of having that
23 evidence ---

24 THE CHAIRMAN: What you mean by these
25 references is that the retail pharmacist has no bargaining
26 power?

27 MR. FRAWLEY: That is right; he pays
28 whatever the manufacturer charges. The Commission is
29 dealing with situations not like this, but dealing with
30 business situations all the time, and I think the



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1 Commission must ask how does it come about that Smith,
2 Kline and French can import a tablet for \$1.15 a 1,000
3 and ask the retailer and get the retailer to pay \$57 a
4 1,000, and suggest to the retailer that he charge to the
5 consumer \$95 a 1,000?

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1 I think that you must ask yourselves "What
2 are the situations?" You say "Well, no --" -- you
3 do not say "No" but perhaps you are saying, "Well,
4 no, we will just sit here and wait for proof". Now,
5 I must not get into the question of the prohibitive
6 value of evidence and the prohibitive value of inference
7 and the prohibitive value of absence of explanation but
8 all of these things will be present to the Commission
9 when they are examining the situation I am discussing.
10 All I am saying is the Commission has a duty under
11 the statute and all I need do is make passing reference
12 to it because I am quite sure the Commission will give
13 these things their proper effect and say to yourselves
14 "This situation must be the result in some way, must
15 be to some extent an abuse by the manufacturer of
16 his monopoly position". If you do say that then
17 we have not got into restraint of trade; restraint
18 of trade to see a man in a captive market, you may
19 say there is some restraint of trade in there but it
20 serves my purpose as well to see Mr. Isaacson, he
21 is there and he is captive and Smith Kline and French
22 choose to make use of this and Mr. Isaacson pays out
23 at \$57.00 and sells it to me at \$95.00.

24 I now want to discuss, because I think it is
25 very important, it emphasizes and bears out what I am
26 talking about when you look at the range of prices.
27 That is just as important as the spread between the
28 manufacturers cost and the price in the drugstore.
29 If you look at Merck's cathomycin which you will find
30 on page 2 under the antibiotic section you will find



1 that Merck is putting a list on that of \$60.45. It
2 has a cost -- I am not going into that again, but
3 Merck has a list price of \$60.45 but sells to the
4 University Hospital at Edmonton for \$27.13 for one
5 hundred. I would call your attention to the fact
6 those letters "HP" simply mean that is the ordinary
7 published hospital price.

8 I think it was in evidence but if it is not
9 it is abundantly clear that these manufacturers
10 publish a list, the ordinary list which is the list
11 for the consumer but many of them have in the same
12 catalogue or a separate one a hospital list. I am
13 emphasizing the fact that in this case the University
14 Hospital did not pay \$27.13 after calling for bids
15 because where that is being done I have noted it
16 in my exhibit. It simply means that Merck has a
17 price for this article and he wants \$60.45 when he is
18 asking the public to buy it but is willing to sell it
19 to the University Hospital at Edmonton for \$27.13.

20 I want to give you some more and go back to
21 the same general observations.

22 THE CHAIRMAN: You say this is not the price
23 which the hospital pays when tenders are called?

24 MR. FRAWLEY: No. But there are some of
25 those.

26 THE CHAIRMAN: With regard to this particular
27 drug?

28 MR. FRAWLEY: No. You will find that
29 dealing with tetracycline there is a rather remarkable
30 situation there but when you bid that is something else



1 but this is just the hospital price, the published
2 hospital price and that is \$27.13. I have no
3 information, it may have been called for tenders for
4 novobiocin but probably not. That is a drug which
5 is not used in sufficiently large quantities, not
6 bought in large quantities so they would call for
7 bids or tenders.

8 Passing to Pfizer's cosa-tetracylin on page
9 three you find there a list of \$47.84 for one hundred
10 and there is a price to the University Hospital and
11 that is a bid, of \$16.50. The University Hospital
12 can buy that when they are calling for tenders for
13 20,000 lots.

14 THE CHAIRMAN: It looks like a misspelling
15 there because it says big but that should be bid, I
16 suppose?

17 MR. FRAWLEY: Yes, there was too much big
18 around there so even the stenographer was impressed
19 with it. This bid for 20,000 lots, when you compare
20 the two prices you are asking the public to pay
21 \$47.84. We will put to one side what it costs
22 Pfizer and they are willing to sell it on a bid for
23 \$16.50. What does that mean? It means simply this,
24 when the University Hospital or any hospital that
25 size -- that is a big hospital with 1100 beds and when
26 they call for bids then these manufacturers sharpen
27 their pencils, then the competition begins to work
28 because you will find -- if there is any part of
29 this information that you would like to be followed
30 up it goes without saying either you can communicate



1 with Mr. Maday at the University Hospital direct or
2 through me and I am sure that he would send you down
3 his bids, his tenders. When they call for
4 cosa-tetracyn that is what we are talking about at the
5 moment, they call for bids from many manufacturers.
6 It happens, as a matter of fact, that they called for
7 a bid they included among the bidders the Nadeau firm
8 who indeed makes muracine and, as a matter of fact,
9 you see what happened. Nadeau put in a bid of
10 \$12.50 and without wanting to give evidence here I
11 can assure the Commission that they got the business
12 at \$12.50 because the closest bid was \$14.95 and
13 Pfizer's was \$16.50. There were other bids, it
14 was not limited to three but I was simply using those
15 three bids. However, you will find there with Nadeau
16 there is a list price of \$32.00 and that is a lot
17 less than Pfizer's tetracycline and they are willing
18 to go down from \$32.00 to \$12.50.
19 What does that mean? Well, that means
20 nothing more than that there is there working the
21 discipline of the marketplace, if you want to call it
22 that. The University Hospital is sitting back
23 asking for bids, Mr. Maday who is the chief
24 pharmacist at the University Hospital is not Mr.
25 Isaacson sitting in his drug store in Toronto and
26 that is a dramatic instance of the situation. Mr.
27 Isaacson says "I pay what the manufacturer chooses
28 to charge me". Mr. Maday buying in quantity
29 for the University Hospital does not accept that
30 situation at all and the Pfizer company and the other



1 manufacturers know he will not accept that situation
2 so they get down to business and bid \$12.50, \$14.95
3 and \$16.50 against such prices as \$32.00, \$47.84 and
4 \$47.84.

5 There are two or three more I want to call
6 to your attention. We come to Parke-Davis on their
7 brand of chloramphenicol named chloromycetin and we
8 find there is a list price of \$39.40 for one hundred.
9 However, what does the University Hospital pay? They
10 pay \$12.48 and that is not a bid, that is just a
11 list price to the hospital.

12 Now, we pass on to Schering's meticorten
13 on the next page and we find that Schering meticorten
14 has a list of \$22.70. However, if you look in column
15 7 you will find that after the University Hospital
16 bids for this you get a price of \$1.62 that Schering
17 is willing to sell this meticorten to the University
18 Hospital at \$1.62 but it is quite content to ask me
19 to pay \$22.70 because they suggest that price to the
20 druggist when they are supplying the retail drug
21 trade under the circumstances which Mr. Isaacson has
22 spoken of.

23 Then we pass to meticortelone and you find
24 there, strangely enough a list price of \$22.70 the
25 same as the list on meticorten. However, if you go
26 over to the price to the University Hospital you find
27 it is \$8.20 -- that is for 500, I am so sorry, there
28 is no point in what I was saying at all. Here is
29 what you have on meticortelone, a list price of 100,
30 column four, \$22.70. Now, if you convert that into



1 a list price for 500 you would have \$113.50 but the
2 University of Alberta Hospital can buy those 500 for
3 \$8.20 and that is without calling for bids, that is
4 the list price published by the Schering Corporation.

5 THE CHAIRMAN: \$8.20 for 500 would be about
6 \$1.62 -- \$1.64 so that is practically the same thing?

7 MR. FRAWLEY: Yes, so Schering is willing to
8 sell its meticorten, its meticortelone in the
9 neighbourhood of \$1.60 for 100 to the University
10 Hospital and I take it to any other hospital that
11 belongs to the Hospital Association.

12 THE CHAIRMAN: The bid does not seem to make
13 very much difference in that instance?

14 MR. FRAWLEY: No, not in that instance but
15 there are cases where it does seem to make a difference.
16 Now, if you go to dexamethasone, Merck's decadron,
17 there is a list of \$29.80 for 100 and the University
18 of Alberta Hospital pays \$11.50 according to the
19 hospital list. Now, I say that competition is working
20 in the hospital because you see there is some
21 purchasing power, there is a hospital buying in
22 quantity, they represent a group and therefore there
23 is a list published. They do not regard the hospitals
24 as captive business like they do regard, apparently,
25 the retail pharmacists on the authority of the very
26 creditable witnesses I submit that I brought to
27 discuss that with the Commission.

28 MR. TURNBULL: May I request Mr. Frawley
29 to quote comparable levels of list price? He is
30 quoting as opposed to the hospital price which are not



1 the same buying levels. The price to retail
2 pharmacists can be considered as the same buying level
3 as the price to the hospital and the figures would be
4 more, actually maintain them at the two levels --

5 MR. FRAWLEY: We all understand, we have
6 read it over and over again. The document is perfectly
7 plain, I am sure, and that is why I went to the trouble,
8 so much trouble I travelled out to Edmonton to have
9 it accurate and correct and I have all the prices, the
10 list price, the price to the retail pharmacists, the
11 price to the wholesaler in Alberta and the price to
12 the University Hospital in Edmonton and so on.

13 THE CHAIRMAN: Your submission shows in
14 all these cases the price to the hospitals are lower
15 than to any other purchaser?

16 MR. FRAWLEY: Yes.

17 THE CHAIRMAN: Your contention is that this
18 is because of competition which the hospitals possess
19 as against lack of competitive influence by the other
20 person.

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1 MR. FRAWLEY: That precisely puts very
2 well exactly what I am contending.

3 THE CHAIRMAN: It is not a matter of the
4 drug companies wanting to make things a little easier
5 for the hospitals?

6 MR. FRAWLEY: No, what happens is this:
7 you have a hospital list and the hospital is thinking of
8 buying something in quite large quantities and they say
9 there is the hospital list, and we will see how much
10 better we can do and call for the beds, and there come
11 the low prices when all the manufacturers of broad spectrum
12 antibiotics and so forth come in, and the price comes down,
13 and then there is the price which Mr. Isaacson has to pay.

14 THE CHAIRMAN: I wonder whether the fact
15 that the hospitals have to buy in quite large quantities
16 might have some influence on the smaller prices?

17 MR. FRAWLEY: I think so, yes, but you
18 have to look how far down it goes, that is all. Certainly
19 there is a certain amount of volume discount buying, and
20 I suppose that if the situation ever came about -- but
21 you see again it is the captive market, again it is
22 because the manufacturer knows what goes on in the drug-
23 store. I don't go in for a prescription of 25 tablets of
24 Largactil or Cosa-Tetracylin, and say how much are you
25 going to charge? And then say, "If I buy a thousand will
26 you charge less?", and the druggist says, "Oh, yes, if
27 you buy a thousand I will give you a better price". He
28 knows that is just fantastic, that is fairyland. I take
29 my 16 tablets and go home and do what the doctor told me.
30 I don't buy a thousand tablets to let them waste in the



1 medicine cabinet. The manufacturer knows that, and you
2 have to look at the whole picture together, and that is
3 what Mr. Isaacson means when he says, "I pay what the
4 manufacturer asks me", and also what Mr. Moley says when
5 he says about Nadeau, "Yes, I will buy their Tetracycline
6 at 12½¢. It is no concern to me what the patient pays.
7 I will make the competition work". You and myself have
8 no way to make the competition work, and I submit that is
9 what the Commission is after. We have Largactil, where
10 you have a list of 89¢ a 100. I am turning that into
11 thousands, not because it is true practically that a
12 patient would want to buy a thousand, but putting it into
13 thousands it is \$89.00 of course. Now, what you find
14 when you come to look at what the University Hospital pays,
15 it pays \$5.53 for double the strength, because the \$8.90
16 per 100 is the 25-milligram dosage. It pays \$5.53 a 100
17 for the 50-milligram dosage. And the column 11 says the
18 mental institutions pay \$18.00 a thousand in 100,000 lots.
19 They are buying on bids called for by their generic name,
20 because all the bids set out by the University Hospital or
21 by the mental institutes in Alberta, and in fact that is
22 the practice all over Canada, are called for by generic
23 names. Passing to Promazine, we find that Wyeth's Sparine
24 in 25-milligram dosage has a list of \$4.37 a 100, or
25 converted into 1,000's, \$43.70, but the institutions in
26 Alberta will pay \$12.10 a 1,000 for the 50-milligram
27 dosage, for the dosage twice the strength of the 25-milli-
28 gram dosage that goes on the shelf at \$5.25 for 50.

29 Then I have Schering's Trilafon, which you
30 will find on page 6, and there you have a list price of



1 \$8.60 a 100, or \$86.00 a 1,000 for the 2-milligram dosage,
2 and then you will find that the mental institutes buy
3 that for \$41.20 a 1,000 in the 8-milligram dosage. That
4 is four times the strength. Or \$58.00 a 1,000 in the
5 16-milligram dosage, eight times the strength.

6 And then I only want to call your attention
7 to Sandoz' Mellaril, which is an ataractic, has a list of
8 \$12.50 per 50, or \$250.00 for 1,000, which only means, I
9 suppose, if 20 people came into the drugstore, one after
10 another, they would pay \$250.00 after having been asked
11 to pay \$12.50 for 50, and the mental hospitals pay \$65.80
12 a 1,000 for that same dosage, as against a list of \$250.00
13 a 1,000.

14 Now, I put it to the Commission that looking
15 at that list of drugs, that they must come to a conclusion
16 that there are indications there, strong indications there,
17 that competition is working when hospitals and mental
18 institutions are buying, that there are in the retail
19 trade conditions or practices which are related to monopo-
20 listic situations or restraint of trade.

21 Now, I have already put it to the Commission
22 that the Commission must demand the spread between costs
23 and prices. The Commission, in my submission, must know
24 the revenue cost position of these drugs. Now, I say
25 that because in my respectful submission the Commission
26 could not come to a conclusion as to what recommendation
27 to make to the Minister if they were completely uninformed
28 about the revenue cost position. It is true that the
29 Commission may say, "Well, we are concerned regardless of
30 how much money they are making, we are concerned with



1 whether they are making it as a result of an abuse of
2 the monopoly position, or as a result of a restraints
3 trade practice", but before you can come to that you must,
4 not for any collateral interest, or human curiosity, you
5 should know the cost revenue position, and in that regard
6 I want to challenge the statement made yesterday by Dr.
7 Dixon. I got the impression that the effect of what he
8 said was that any evaluation of an individual segment
9 of the drug industry was valueless, impossible.

10 THE CHAIRMAN: I think he said impossible.

11 MR. FRAWLEY: Yes, impossible. Well now,
12 with great respect, I ask the Commission to reject Dr.
13 Dixon's fears and doubts, because I want to put to the
14 Commission something, and this is an administrative body
15 and for that reason I feel I can do that, because all
16 avenues of investigation are open to this Commission in
17 its quasi-judicial capacity, and I call to the attention
18 of the Commission a cost analysis that was recently
19 completed before the Royal Commission on Transportation.
20 Now, I think it is worth the Commission's investigation.
21 They will find there that the two great railways of
22 Canada embarked upon a cost analysis to determine what
23 cost revenue position was, they knew the revenue, they
24 had been complaining about the revenue for many, many
25 years, and they set out to find the cost revenue relation-
26 ship for moving 100 pounds of grain to export positions
27 in Western Canada, Fort William or Vancouver. They took
28 a long time and spent a great deal of money to do it, but
29 they did it, at least to their own satisfaction.

30

THE CHAIRMAN: Did they do it to your



1 satisfaction?

2 MR. FRAWLEY: No, but what I did I did to
3 my own satisfaction, and what I did was to establish, and
4 I must not say I, I and the Province of Manitoba, because
5 the Province of Alberta and the Province of Manitoba
6 established the counter-analysis, and the counter-analysis
7 came up with the finding that the revenue and the cost
8 equalled each other, that it just came out substantially
9 flat, that the revenues in 1958 equalled the expenditures
10 in 1958, and the 17 million dollars that the Canadian
11 Pacific Railway sought to establish as being the situation
12 in 1958 as the cost of moving grain for export in Western
13 Canada ---

14 THE CHAIRMAN: A loss of 17 million?

15 MR. FRAWLEY: Yes, and that is an out-of-
16 pocket loss, a loss under variable costs, never mind what
17 went above variable costs, I put it with considerable
18 confidence that if the Canadian Pacific Railway Company
19 and the Provinces of Alberta and Manitoba, through their
20 cost analysts were able to determine to their respective
21 satisfactions what it costs, what it did cost to move a
22 100 pounds of grain from Qu'Appelle, Saskatchewan to Fort
23 William, Ontario, knowing the capacity of the railways,
24 I submit with confidence that it is ridiculous to say that
25 you couldn't make a similar revenue cost analysis in the
26 case of a group of drugs, corticosteroids, antibiotics
27 and tranquilizers, and when you look at what Mr. Thompson
28 said to me, you will find I discussed at considerable
29 length that kind of breakdown, and he said to me, he said
30 it rather interestingly, naively: "I am a little surprised



1 Mr. Frawley, that you would suggest that I dismantle my
2 price structure and lay it bare to my competitors, and
3 I might say that my company has submitted considerable
4 information in this regard to the Director, in confidence".
5 What I am now saying to the Commission, is that the
6 Commission should obtain that information. Mr. Thompson
7 does not indicate anything of the nature that Mr. Dixon
8 indicated, that I cannot do it. No, he simply said I
9 won't do it because it would not be fair to me with my
10 competitors looking over my shoulder. I wouldn't put that
11 on the table, unless the Commission forced me to do it,
12 when I will do so in confidence. So the Commission can
13 have it. I am not content with it, but I am accepting
14 that situation, and asking the Commission to investigate
15 this cost revenue relationship, and do not be deterred in
16 the least by the generalities of Dr. Dixon indicating it
17 is just somebody's allocation of such-and-such arbitraries.
18 That is the way it used to be in the Canadian rail freight
19 world, but the Canadian Pacific decided that they would
20 make an exception for this particular piece of traffic.
21 I say again, if you could do it for a 100 pounds of grain,
22 you could certainly do it for Stelazine, or Achromycin or
23 Chlortetracycline, and so I ask the Commission to look
24 into that.

25 THE CHAIRMAN: Do you think you will be
26 much longer, Mr. Frawley?

27 MR. FRAWLEY: Yes sir.

28 MR. HUME: Before you break, I would like
29 to make one very brief comment. Mr. Frawley, in his
30 references to the first Commission, realizes that I was



1 present during that, and he is quite right when he says
2 the Canadian Pacific Railway cost was an arbitrary study
3 which he did not like, and then he produced another one
4 and the Provinces another, and who is to say which is
5 right, and perhaps all three are wrong and Dr. Dixon's
6 opinion of the impossibility of having an accurate cost
7 analysis is correct.

8 MR. FRAWLEY: The railways did it, Alberta
9 and Manitoba did it, and I say you ask the drug companies
10 to do it for this. Do not be deterred by the generalities
11 of Dr. Dixon.

12 THE CHAIRMAN: Do you want us to do it in
13 turn for each of them?

14 MR. FRAWLEY: You can put your own appraisal
15 on it. You can reject it or accept it after it has been
16 filed.

17
18 --- Short Recess
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1 MR. FRAWLEY: Mr. Chairman, and members
2 of the Commission, before we rose Mr. Hume had made
3 in one of his always helpful suggestions a suggestion
4 about the matter of a cost-revenue relationship, and
5 I am more content to rely on what Mr. Thompson, the
6 witness for Cynamid, said than upon either Mr. Hume
7 or Dr. Dixon, and I find looking up evidence of Mr.
8 Thompson in volume 15, page 1659, the Commission
9 will recall, after I put this to him, he indicated that
10 he did not want to do this because it would be for
11 the benefit of his competitors, and on page 1659, near
12 the top of the page, you said, Mr. Chairman, that
13 what Mr. Thompson said was that he did not think he
14 should be asked to break this down for the benefit
15 of his competitors. Of course, I thought from what
16 Mr. Thompson said that the Commission already had that,
17 and then I said this -- Mr. Thompson was there and
18 his counsel also -- "I thought that Mr. Thompson was
19 going -- I am glad he did not -- I thought he was
20 going to take the position that he couldn't do that
21 because there would be so many arbitraries to be
22 allocated and he couldn't do that. I am very glad to
23 see he doesn't object to my question on that ground
24 at all. Simply says I don't want to do that because
25 it would give comfort to my competitors. How often
26 have we heard that." You, Mr. Chairman said:
27 "No manufacturer wants to expose the breakdown of
28 his various costs..." Now, I do rely upon that.
29 Mr. Thompson could have said: "I cannot do it. Don't
30 ask me to do it; it is quite impossible to do." He



1 took quite a different position -- "I don't want to
2 do it but I will do it for the Commission."
3 Continuing on page 1660, Mr. Thompson said: "I would
4 be happy to furnish it" -- that is what I was talking
5 about, that cost breakdown -- "I would be happy to
6 furnish it to the Commission in confidence, Mr.
7 Frawley. We have no desire to hold secrets from
8 the Commission." I say that in my respectful
9 submission the Commission should not be deterred from
10 the generalities of Mr. Thompson and they should obtain
11 the Cynamid and some of the other drug companies or,
12 in fact, all of them, just what this cost-revenue
13 relationship is. I put it in my question, and that
14 would show all of the monies expended for sampling
15 expenses, travelling representatives, called detail
16 men, advertising by mail, free samples, research
17 expenditure and profit, and I do say that would be a
18 very important piece of basic information which the
19 Commission should have before it makes its report to
20 the Minister on whether or not there is or is not
21 an abuse of a monopoly position.

22 Now, I also want to say that I am pressing,
23 I am urging the proposition that there is no
24 discipline of market price in connection with that
25 part of the drug business between the manufacturer
26 and the wholesaler and retailer, whatever there might
27 be between the manufacturer and the hospitals and
28 the mental institutions on the other side and if it
29 were so that there was plenty of competition, the
30 hospitals with their bargaining power and the mental



1 institutions with their bargaining power and bulk
2 buying the Commission should investigate under the
3 section and what the public has been complaining about,
4 because I have not got to prove that there has been
5 public complaint, it has been admitted, we have it on
6 the record. Now, as a matter of fact, if the hospitals
7 are nationalized it is all supplied to you at the
8 expense of the state, but it does appear that the
9 state doesn't have to pay the same high cost of drugs
10 when the patient is hospitalized. I am sure the
11 Commission will remember the story told in Edmonton
12 where a patient had been on drug therapy in hospital
13 at no expense to the patient and then was released
14 and found to be in urgent need of the same drug,
15 had the prescription for it and couldn't do anything
16 about it because the patient hadn't the money for it.
17 The money had to be obtained from one of the community
18 agencies in Edmonton and that prescription obtained.
19 That is where the cost is hidden, the person has
20 had it in hospital, the person has been released
21 from hospital.

22 My friend Mr. Hume referred to the 1960
23 edition of the Business Quarterly published by the
24 University of Western Ontario in London, Ontario, and
25 these are the concluding words of what Mr. Hume
26 quoted from, and I will read the whole of the last
27 paragraph.

28 "Above all let us realize that
29 the key issue here is one of freedom.

30 Drug manufacturing has never been
(P. 3192 follows)

CONTINUED ON PAGE 3192



1 considered a public utility in
2 this country; on the contrary, it
3 has been left for private capital
4 and private initiatives to
5 develop. And as long as this
6 is to be the case, we suggest
7 that it is up to the marketplace,
8 not our legislators, to determine
9 whether drugs or any other prices
10 are too high."

11 I am content to say that it should be left
12 to the market place, but it is not left to the marketplace,
13 and that is precisely the point I am endeavouring to
14 put to the Commission this morning, on the opinion of
15 men in industry, that is from Mr. MacLeod of Edmonton,
16 who is in this very peculiar position of being the
17 Chief Pharmacist for the University of Alberta and
18 being a retailer in the City of Edmonton. I think
19 nobody could speak more competently than Mr. MacLeod,
20 and also Mr. Isaacson, and the author my friend Mr.
21 Hume quoted feels the same way. On evidence there
22 is no discipline in the marketplace between the
23 manufacturer and the wholesaler and the retailer.

24 On page 4 of Exhibit T-5, dealing with
25 corticosteroids, my column 3, Manufacturer's cost,
26 are all blank, but thanks to the courtesy of my friend
27 Mr. MacLeod I am able to give you a reference in the
28 Green Book to meticortelone. It is true that the
29 Green Book is dealing with prices filed before the
30 Kefauver Committee, but he does say:



1 "...it may be noted that
2 evidence before the recent
3 Senate Committee in the United
4 States was to the effect that,
5 for Schering's prednisolone
6 sold under the name Meticortelone,
7 the cost of manufacturing 100
8 tablets (five mg.) was \$1.57.
9 The selling price to a retail
10 druggist was \$17.90 and the
11 suggested retail price was \$29.83.
12 The list or suggested selling
13 price of the same tablets in
14 Canada is \$33.13."

15 And you know, Mr. Chairman, I am tempted to
16 call the Commission's attention, looking at page 4
17 of my exhibit, that bid price to the University
18 Hospital of \$1.62, and when you look at it you find
19 a remarkable similarity to the cost of manufacturing
20 100 tablets, not less than cost, but they are willing
21 for the University Hospital to come down almost to
22 their cost, and at the same time they are content to
23 ask the consumer: "We suggest that you put a price
24 of \$22.70 on that package." When they are selling
25 to the University Hospital they are down to \$1.62.
26 Incidentally, as you called to my attention, sir,
27 when you look at the meticorten you can just see that
28 the hospital price wasn't very different from the
29 bid, and when you look at that and just consider the
30 situation that follows from an examination of those



1 figures, it almost appears as if Schering, when he
2 is selling to a hospital, he is getting the cortizone
3 derivatives, he is willing to get right down to
4 costs, but he has enough confidence in his monopoly
5 position to ask \$22.70 when he is selling to the
6 public.

7 I have now finished with my comments and
8 what comes out of my exhibits, and I want to refer
9 to two or three matters which were raised in the
10 remarks of my friend Mr. Hume yesterday.

11 Mr. Hume spent quite some time looking at
12 paragraph 464, 467 quite some time, and took exception
13 to what he called the conclusions reached by the
14 Director from the facts which the Director has
15 collected. My friend Mr. Hume called that opinion.
16 I have a different concept of the meaning of the
17 word "opinion" in this context. I say it is not
18 an opinion at all, it is the conclusion which the
19 Director says he takes from the facts established.
20 If my friend Mr. Hume was concerned that the Director
21 had taken a wrong conclusion, then he could have had
22 the people here. No. Mr. Hume appears-- and I
23 don't use the word offensively, but I hope accurately
24 -- he appears as counsel for this faceless group
25 of people called the Association of Manufacturers,
26 faceless because they know nothing of the costs,
27 practices of any of the constituent members. In
28 fact, they were at great pains not to find out. Now,
29 that is the organization that Mr. Hume appears for,
30 and he comes in his capacity as counsel and complains



1 about 467, and if my friend felt that the conclusions
2 which the Director was reaching, which I think are
3 correct conclusions, if he felt they were unfair
4 conclusions, then why were they not here to deal with
5 each and every allegation in so far as it affected
6 their own company.

7 My friend also took some comfort and told
8 the Commission -- and I don't know quite why -- that
9 there was no public interest in this inquiry. Well,
10 one finds when one looks at the list of people that
11 appeared, we find that in Ottawa the Canadian
12 Association of Consumers and the Canadian Federation
13 of Agriculture appeared, in Winnipeg the Government
14 of Manitoba appeared, in Regina the Government of
15 Saskatchewan appeared, in Edmonton the Government of
16 Alberta and the provincial Department of Public Health
17 appeared, and that indicates those people appearing
18 in their respective capacities were surely
19 representing the public of their respective provinces.
20 In the Province of Ontario we find that they have
21 actually set up their own Select Committee of the
22 Legislature, and that is probably why they didn't
23 think it necessary to come before this Commission.
24 I say there is plenty of public interest in the high
25 cost of drugs, and if my friend Mr. Hume indicates
26 that even if the Commission found that nobody had
27 appeared at any of the inquiries, that wouldn't
28 have released the Commission from inquiring into
29 the evidence of this Green Book and coming to its
30 own conclusions.



1 Mr. friend said something leading into this
2 question of brand names. He did say that there
3 wasn't a great deal of difference between a generic
4 drug to which was attached the name of the generic
5 supplier and a drug with an out-and-out brand name
6 by one of the manufacturers. Now, there is, of
7 course, a very remarkable difference that I want to
8 call to the Commission's attention. I would ask you
9 to look at my exhibit T-5 again, and you will find
10 on page 2 that the list price of tetracycline runs
11 from \$43.13 in the case of Lederle's achromycin
12 and \$32.00 in the case of Madeau's muracine. But
13 you will find that Gilbert is selling tetracycline
14 by its generic name at \$18.00 a hundred to the
15 physician and \$14.40 a hundred to hospitals and
16 retail pharmacists. That is a difference that Mr.
17 Hume didn't tell the Commission about. That is
18 the difference that happens between the manufacturer
19 selling by a brand name and a generic name supplier
20 selling by a generic name where he attaches his
21 own name to it. I refuse to accept any other
22 differences until it has been proved and demonstrated
23 that there is a difference in quality. I don't
24 think the Commission should even consider that there
25 is even the slightest difference in quality in drugs
26 that are being sold by these generic suppliers.

27 There are one or two points on page 3. If
28 you will look at the chloromycetin upon which Parke-
29 Davis put a list price of \$39.40 and appreciate
30 that Starkman is selling chloramphenicol at \$9.95
a hundred.



dpw

1 Gilbert is selling it at \$12.50 a 100 to the physician,
2 or \$10 to the hospital and retail pharmacist. Empire is
3 selling it at \$19.60 a 100. That is the difference price-
4 wise between the generic supplier selling it by generic
5 name, plus his own name, if you like, and the so-called
6 ethical manufacturer -- I don't mean "so-called": the
7 ethical manufacturer selling it by brand name.

8 If you look at Prednisone, you will find
9 the brand name man wants a list price of \$22.70, and
10 Starkman, a generic supplier, will sell it for \$3 a 100,
11 and Empire \$7.20, and the same applies with respect to
12 Prednisolone, Schering's Meticortelone and Parke-Davis'
13 Paracortel.

14 With the tranquilizers, the situation is
15 similar. In the case of Largactil, Poulenc suggests a
16 list price of \$8.90; Starkman will sell for \$22 a 1,000,
17 Gilbert for \$2.50 a 100 to the physician or \$2 a 100 to a
18 hospital or retailer, and Empire \$4.40 a 100 to anybody
19 who buys it by generic name.

20 THE CHAIRMAN: In the Empire price of
21 \$4.40, does the other 100 mean milligram?

22 MR. FRAWLEY: No, I am afraid that is
23 nothing more than a typist's error. I think that can be
24 struck out. I just noticed that now for the first time.

25 Then, I think we have to come down to
26 Meproamate on page 8. You will find the difference there
27 price-wise between the brand name people and the generic
28 people: you will find Wyeth has a suggested list price on
29 its Equanil of \$5 for 50, and Starkman will sell for \$9.75
30 a 1,000. Just look at that difference: if you convert the



1 Wyeth price into thousands you get \$85 a 1,000 for Wyeth's
2 Equanil. Starkman will sell for \$9.75 a 1,000, and
3 Gilbert will sell it for \$1.35 a 100 or \$1.08 a 100, and
4 Empire at \$1.80 per 100.

5 In my respectful submission there is a very
6 great difference between buying by generic or buying by
7 brand name.

8 In that regard I want to call the attention
9 of the Commission to the evidence given before the Ontario
10 Select Committee by the Minister of Health in Ontario,
11 Dr. Dymond. I haven't got that transcript, but I would
12 like to read into the record a news story in the Toronto
13 Daily Star of November 17th 1961. The headline was:

14 "SAVE \$341,616 ON DRUGS BY GENERIC NAME --
15 DYMOND

16 The province is saving 10 per cent of its
17 drugs bill by purchasing under straight
18 generic names, Health Minister Matthew
19 Dymond said yesterday.

20 He said his department saved \$341,616 in
21 the past 18 months on tranquilizers and
22 barbiturates.

23 He told the legislative committee on the
24 cost of drugs the savings began 18 months
25 ago, when a drug testing program was
26 started.

27 The department always has bought under
28 generic names, but these were generic
29 drugs under company names. Now, purchases
30 are by straight generic lots.



1 'We buy only from houses with no trade
2 names', he said.
3 Mr. Dymond was one of the last to appear
4 before the committee, which ended its
5 hearings after 18 months and 58 briefs.
6 Transport Minister Leslie Rowntree,
7 committee chairman, said he hoped the
8 report would be ready to present to the
9 Legislature at the coming session.
10 Mr. Dymond said six lots of drugs had to
11 be sent back to the manufacturer because
12 they failed to meet test standards.
13 He said he was willing to extend the
14 testing program to general hospitals on
15 a fee-for-testing basis.
16 However, he felt the Hospital Association
17 was big enough to do the job on its own
18 and set up a central buying system to get
19 lower drug prices through buying huge lots.
20 The hospitals are studying this, said
21 S.W. Marin, executive-treasurer of the
22 Ontario Hospital Association".
23 I put that into the record to indicate it
24 is not any fantasy on my part to be putting to the
25 Commission from time to time that it is important that
26 there should be freedom of sale of generic drugs, and
27 the difficulties which the generic drug people are finding
28 are due, I suppose, to many things. All I am pointing out
29 is that there is a difference in price, and nothing could
30 point it up quite so effectively as the experience of the



1 Ontario Department of Public Health.

2 I only want to say one more thing and I
3 have finished, sir. Mr. Hume yesterday took occasion to
4 refer to the articles in the Calgary Albertan, and Mr.
5 Turnbull this morning was almost emotional about it, and
6 indicated it disclosed a deplorable state of affairs and
7 something that lowered the standing of the fourth estate
8 in our country. Well, I have nothing at all to say about
9 that one way or the other. I think it is common knowledge
10 that those articles were written as a result of the
11 disclosures before the Kefauver Committee. However, Mr.
12 Hume went on to say:

13 "The articles that appeared in the
14 'Albertan' were filed as an exhibit and at page 1122 Mr.
15 Romaine said that the purpose of coming before the
16 Commission was to show a concerted effort on the part of
17 the retail pharmacists and manufacturers to keep generic
18 products out of the market. Retail pharmacists and
19 ethical manufacturers will continue to fight the impor-
20 tation of inferior quality pharmaceutical products into
21 Canada. They will continue to use every weapon at
22 their disposal to try to convince the Canadian public
23 that their products are superior and should be used.
24 The fact that practically eleven thousand-odd doctors
25 agree with them is a very significant matter".

26

27

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1 I would like to say to the Commission
2 that the record here is that there is an infinitesimal
3 amount of manufacturing of basic drugs in this country,
4 that they are practically all imported, largely, of course,
5 immediately imported from the United States. Those that
6 are not made in the United States are of necessity
7 imported from abroad. So, we are using in this country
8 in large part drugs that are imported. So, my friend
9 cannot take the situation and stand behind his manufactures
10 in Canada as being Canadian manufacturers seeking to
11 protect their Canadian manufacturing from imports. That
12 is not the situation at all. I don't need to point that
13 out to the Commission as all of the evidence in the Green
14 Book and everything it has heard would indicate it is all
15 coming into this country. We haven't gone into the
16 United States to find out the percentage these people make.
17 For instance, Schering does not make its Prednisone and
18 Prednisolone in Canada; I say that subject to correction,
19 but I understand it is a fact. Does Schering in the
20 United States make it, or does Schering bring it in from
21 Italy, Denmark, France, Japan? I don't know. This
22 Commission doesn't know. But, it is an imported product
23 in this country when we buy it in the drugstore. So, I
24 think to set up the Canadian manufacturer against the
25 imported article does not hold water. Whether we like it
26 or not, using and being charged for these imported
27 articles -- these Canadian companies are nothing but
28 branches, and some are not even formally incorporated
29 under our company laws. I am not making any point of
30 that, but they are branches of American houses. On this



1 question of importation, Schering, Merck imports Decadron;
2 do they make the dexamethasone in New Jersey, or is it
3 imported from Italy? I don't know. However, it is
4 imported when we get it in Canada. I don't like my
5 friend talking about our Canadian manufacturers and "we
6 will stand up to protect them against the imported
7 article".

8 THE CHAIRMAN: I think he said "imported
9 inferior article".

10 MR. HUME: Yes, "inferior".

11 MR. FRAWLEY: Well, if anyone sells to the
12 public and it is inferior, then the Food and Drug Direc-
13 torate of the Federal Department of Health and National
14 Welfare is not doing its job, and I would not even suppose
15 they are not doing their job; quite the contrary, I am
16 sure they are doing their job. Therefore, my friend does
17 not need to fear getting an inferior quality if we are
18 buying imported drugs either by generic name or brand
19 name. I might buy some brand name that was imported,
20 and Mr. Hume might buy a generic name drug which was
21 also imported: they both have been passed by the Food and
22 Drug Directorate, so what is the point of talking about
23 protecting Canadian manufacturers against drugs of imported
24 inferior quality? If there are any sold in Canada,
25 people should be prosecuted, and the fact there are not
26 any carries its own conclusion.

27 I am obliged to you, Mr. Chairman, for
28 listening to me at this time, and I have nothing further
29 to say.

30 THE CHAIRMAN: I think we will adjourn for
lunch until 2 o'clock.
--- Luncheon adjournment



1 ---On resuming at 2:00 o'clock.

2 THE CHAIRMAN: Mr. Hansard, are you ready
3 to speak now?

4 MR. HANSARD: Mr. Chairman, I have ceded
5 in favour of my friend Mr. Wahn who apparently has
6 an appointment elsewhere and has assured me he will
7 only be about twenty minutes.

8 MR. WAHN: Mr. Chairman and members of the
9 Commission; I am here today as counsel for Cynamid
10 of Canada and with me I have Mr. Ivan Thornly Hall.
11 At the hearing in Toronto the Commission asked our
12 client, Cynamid, to supply two items of information
13 and I can now make that available to you. Referring
14 to volume 14, page 1480 of the transcript where
15 Mr. Thompson gave information as to the prices
16 of achromycin in various countries and the
17 Commission asked Cynamid to supply it with
18 information as to the countries in which achromycin
19 was produced locally. I am now informed by my
20 client that achromycin is fermented locally by
21 other manufacturers in the countries of Japan and Italy
22 and Cynamid carries out certain finishing processes
23 but substantially it is accurate to say Japan and
24 Italy achromycin is produced locally.

25 THE CHAIRMAN: For Cynamid because it is
26 a trade name?

27 MR. WAHN: Yes. In the other countries,
28 namely, Columbia, Greece, Costa Rica and Mexico the
29 achromycin is imported from the United States and
30 subject only to the local packaging and finishing



1 operations. That was the one item of information
2 which the Commission asked for.

3 The second item, I do not have the
4 reference in the transcript to this but the Commission
5 asked Mr. Thompson to give some indication as to the
6 extent to which the Italian manufacturers of antibiotics
7 were dependent upon the export market. Mr. Thompson
8 has done his best to obtain this information and it
9 is submitted to the best of his information and belief
10 but he thinks it is reasonably accurate and his
11 figures indicate that the annual production in 1960
12 amounted to 25,000 kilos, the sales in Italy, the
13 domestic sales in Italy were 12,000 and incidentally
14 9,000 of that was for human consumption and 3,000
15 for animal consumption and the balance of 13,000
16 was exported. That, I believe, was the information
17 that we were requested to supply to the Commission.

18 THE CHAIRMAN: Would Mr. Thompson obtain
19 that from government sources in Italy or from the
20 company ---

21 MR. WAHN: He obtained that from sources
22 within his own company.

23 THE CHAIRMAN: Can you tell us whether those
24 were employees or officials of the company in Italy
25 who were in touch with the ---

26 MR. WAHN: Mr. Thompson's information, I
27 understand, came from the head office of Cyanamid in
28 the United States. Now, I am afraid I cannot tell
29 you where they in turn obtained the information.

30 THE CHAIRMAN: It makes it rather difficult



1 to say it is completely accurate.

2 MR. WAHN: If you like we can go further
3 into it.

4 THE CHAIRMAN: It would be interesting to
5 know the source from which it was obtained and did the
6 parent company obtain it from government sources in
7 Italy or from any information available on public
8 records in Italy or from the companies that manufacture
9 it in Italy.

10 MR. WAHN: I have not that information but
11 if it is satisfactory to the Commission I will make
12 arrangements so that the Commission will be informed
13 as to the source of the information. I am assured
14 by Mr. Thompson that they believe this information is
15 reliable and the figures are in the order of 25,000
16 kilos produced, 12,000 being consumed locally and
17 13,000 exported so obviously the export market is of
18 great importance to the Italian people.

19 The purpose of this inquiry is to examine
20 into practices, if any, related to monopolistic
21 situations or restraint of trade. Before this
22 Commission have appeared representatives of
23 manufacturers, importers, retail pharmacists,
24 consumers, hospitals, universities, governments
25 and professional and trade associations. In making
26 a complete review of the transcript of evidence which
27 has been presented before this Commission I would
28 submit that the most significant thing about it is
29 that you are unable to find any significant evidence
30 relating to monopolistic or restrictive trade



1 practices.

2 THE CHAIRMAN: Are you referring to the
3 witnesses who appeared before the Commission or also
4 to everything that is in the Green Book?

5 MR. WAHN: I am referring to the witnesses
6 that have appeared and the transcript of evidence
7 resulting from their evidence. Far from showing
8 any significant or far from exhibiting any evidence
9 of monopolistic or restrictive practices, the
10 transcript of evidence, I submit, shows that in fact
11 there is substantial evidence that no such restrictive
12 or monopolistic practices exist in this particular
13 industry. Now, the evidence is long and I have
14 committed myself to Mr. Hansard to limit my remarks
15 to twenty minutes so I will refer merely to one or
16 two examples of this. I would refer first of
17 all to Volume 21 of the transcript at page 2600 where
18 Mr. Turnbull in speaking before this Commission said:

19 "Hospitals and governments
20 together purchase over one-third
21 of all drugs marketed in Canada.
22 The prices paid by them may be
23 less than one-third of the prices
24 paid by the retail pharmacist
25 who purchases the same drugs."

26 Then he goes on to draw certain conclusions
27 from that statement. The point I wish to make is
28 that if the Commission will refer to the Cynamid
29 price list which is in evidence before it they will
30 find that there is about an 8 per cent differential



1 between the prices which Cynamid charges hospitals
2 and the price which Cynamid charges the retail
3 pharmacists. I would submit that this illustrates
4 or this proves that Cynamid pricing policies are
5 obviously very different from the pricing policies
6 of other manufacturers because otherwise it could
7 not be stated that the prices to pharmacists are about
8 one-third of the prices to hospitals when in fact
9 the price of this one manufacturing company --

10 THE CHAIRMAN: The other way around.

11 MR. WAHN: Well, it could not be suggested
12 that prices paid to hospitals are one-third less --
13 thank you Mr. Chairman -- was just one-third rather
14 of the prices paid to the retail pharmacists when in
15 fact there is only a 10 per cent differential between
16 the Cynamid prices. It is probably well known to
17 the Commission that when a combine exists it is
18 almost invariably the case that prices and conditions
19 of sale are somewhat similar across the board and the
20 pricing policies are somewhat similar and the sales
21 policies are somewhat similar. This would be a
22 clear indication, I submit, that there is no such
23 combination in this particular industry.

24 Also, as a second example and merely as an
25 example I would refer to another document which has
26 been put in evidence which is the Surgical pamphlet
27 entitled Surgical News and put out by the Jules
28 Gilbert firm. Page 5 of the May, 1961 issue in
29 that pamphlet there are presented in parallel columns
30 certain prices and the lefthand column is headed up



1 "Brand name drugs at professional prices" and the
2 righthand colum is headed up "Proper name drugs
3 properly priced properly prepared". Mr. Thompson
4 indicated in his evidence that he felt that perhaps
5 this language was somewhat misleading or at least
6 confusing and I believe that this in fact lead to
7 a great deal of confusion in the evidence given
8 before this Commission. The point I wish to make
9 at this point is simply this: this document shows
10 a price for achromycin five which is Cynamid's trade
11 mark \$42.08 per one hundred, these are 250 millogram
12 capsules. That is headed up "Brand name drugs at
13 professional prices." Now, presumably Mr. Gilbert
14 is referring there to the prices charged to physicians.
15 In actual fact, our price list will show that Cynamid's
16 prices to physicians is not \$42.08 but \$25.88 per
17 one hundred. Assuming that this, as we must assume,
18 I think, that this pamphlet has been prepared in good
19 faith, it would indicate there is so little combination
20 and so little consultation in the industry that Mr.
21 Gilbert is not even aware of the prices our company
22 charges physicians and has it as twice as high as it
23 really is. Looking at the parallel column to see
24 the parallel price for Mr. Gilbert preparation you
25 see the price of \$18.00 per one hundred. If, as
26 alleged, these products are similar there would seem
27 to be quite a price differential between them.

28 At this point since I have mentioned the
29 fact that the achromycin tablets produced by our
30 client sell to the physician at \$25.88 per one hundred,



1 I perhaps may make reference to what I consider an
2 unfortunate slip of my friend Mr. Frawley this
3 morning when he referred to the fact that our
4 achromycin capsules sell at a price of about \$43.00 per
5 one hundred. He stated this was the price which
6 we charged for 100 tablets of achromycin on the
7 retail shelf. I need hardly point out to Mr. Frawley
8 or the Commission that the price of \$43.00 which he
9 has referred to is not the price which we receive
10 for ---

11 THE CHAIRMAN: I do not think he said that,
12 I think what he meant was that was the price which
13 would be suggested that the retailer would charge
14 to the consumer.

15 MR. WAHN: The statement actually was the
16 price which we, namely Cyanamid, charged for 100 tablets
17 of achromycin on the retail shelf. We do not charge
18 the price, that is the price that we pay if I go
19 in and order 100 tablets and got it from the
20 pharmacist and, of course, he has his markup and
21 professional fee.

22 MR. FRAWLEY: If I said \$43.00 it was a
23 slip of the tongue. The exhibit is so plain, \$43.00 is
24 what Cyanamid suggested it should sell to the
25 consumer but the next column shows the retailer pays
26 \$25.88.

27 MR. WAHN: My submission, Mr. Chairman,
28 is simply that such evidence as there is before the
29 Commission indicates a lack of any restraint of
30 competition and it certainly shows -- there is



1 certainly no evidence whatsoever of any restrictive
2 or monopolistic arrangements among the members of
3 this particular industry.

4 Reviewing the evidence it appears that a
5 great deal of emphasis has been placed upon the
6 excessive promotional and advertising costs. I
7 believe the evidence presented by Mr. Thompson, and
8 I will not go into it in detail, puts this in its
9 proper context and if carefully considered I believe
10 it will show Mr. Thompson's evidence will show that
11 the expenditures by the manufacturers on promotion
12 and advertising costs are actually modest and perform
13 a very useful function in bringing the characteristics
14 of the various products to the attention of the
15 doctors and the pharmacists. A great deal of
16 emphasis has also been placed in the evidence upon the
17 -- and in the Green Book, upon the excessive cost
18 of sampling. I would suggest also to the Commission
19 that Mr. Thompson's evidence puts that in proper
20 proportion and establishes that costs of sampling
21 have been greatly exaggerated and that in fact the
22 samples which are supplied by the manufacturers to
23 the industry are useful and valuable and serve a
24 purpose. The sample is not subject to any
25 serious criticism.

26 Another item which has been used is the
27 cost of maintaining detail men to call upon doctors
28 from coast to coast. Again I would submit that
29 Mr. Thompson's evidence establishes that far from
30 being hucksters these detail men are performing an



1 extremely useful function again in keeping doctors
2 and pharmacists informed about the most recent
3 developments. Again the cost of maintaining these
4 detail men is not excessive when you consider the
5 number of doctors and the wide distribution of
6 doctors in Canada.

7 Now, my point may be summarized as follows:
8 the cost of promotion and advertising and the cost
9 of sampling and the cost of maintaining detail men
10 on the road, all these are costs which are necessary
11 in order to keep doctors and pharmacists up to date
12 with the rapid development that is taking place in
13 this particular section of industry.



/AG/dpw

1 It is recognized that this is an industry
2 which has grown fast, and the developments have come
3 quickly since the war. Doctors and pharmacists and other
4 professional men receive their education at universities.
5 It is very, very easy for any professional man, and any
6 lawyer knows this, to get out of touch with the most
7 recent developments, unless he is constantly being kept
8 informed, and that is the purpose of the advertising
9 which is paid for by the manufacturers, it is the purpose
10 of the samples which are distributed to doctors, and the
11 purpose of the detailmen, and it has not been established
12 that there is any better method of keeping professional
13 men informed of the most recent developments. This is
14 certainly the way that it has been done in the past in
15 Canada, and certainly the expenditure of these sums of
16 money by the manufacturing companies cannot be interpreted
17 as any evidence of any monopolistic or restraintive
18 arrangement, and yet a great deal of the evidence has
19 related to these particular costs. The means of keeping
20 professional people up-to-date on the most recent develop-
21 ments cannot be over-emphasized. Now, if any of these
22 costs which I have just mentioned are considered excessive,
23 it would be in the interests of everyone to reduce them,
24 and it was for that reason that Mr. Thompson suggested
25 that Cyanamid would be in favour of the promotion of a
26 body which would, of an institute with public support,
27 which would be responsible for circulating to doctors
28 and pharmacists authoritative information on the most
29 recent developments.

30 If it is felt that the costs which I have



1 mentioned are excessive because they are being made by
2 a number of manufacturing companies, and there may be
3 some overlapping, and if it is felt that this can be
4 minimized by the promotion of a co-operative institute
5 of some sort with Government sponsorship and Government
6 assistance which will minimize these costs, then Cyanamid
7 has indicated that it will certainly do everything it can
8 to co-operate, and we think perhaps something could be
9 done to minimize these costs, but these expenditures,
10 whether excessive or not, and we submit that they are not
11 excessive, but these expenditures are certainly no
12 evidence whatsoever of any restrictive or monopolistic
13 practices in the industry.

14 A great deal of time has also been spent
15 on the discussion of the relative merits of prescription
16 drugs sold under brand names and generic names. Again,
17 the important point to remember in this context is that
18 no evidence whatsoever has been submitted to this Commis-
19 sion that there is any conspiracy or any plot to prevent
20 the sale of drugs under their generic names. As I under-
21 stand the evidence, prescription drugs must bear on the
22 bottle or on the container the generic name. When a
23 Canadian manufacturer tries to develop a brand name, he
24 is doing what every other manufacturer of consumer
25 products does, not only in Canada but in every country
26 in the world. He is trying to build up a trade mark
27 which will stand in the minds of the public for a recog-
28 nized quality, and which for that very reason will
29 increase his sales. Every manufacturer does that, and
30 naturally Cyanamid, a manufacturer of a consumer product,



1 does the same thing, and we think, Cyanamid think and I
2 think, that practically every Canadian consumer thinks
3 that there is a value in a brand name. Personally, I
4 believe that over a period of a lifetime a man is very
5 wise to deal with people that he knows and whom he
6 respects, and in whom he has confidence. I believe that
7 essentially that is the reason why every manufacturer
8 tries to build up a trademark, a brand name. It becomes
9 a guarantee of quality to those people who have bought in
10 the past, and who are satisfied, and I believe most
11 Canadian consumers would refuse to buy unbranded merchan-
12 dise when they have the opportunity to buy branded merchan-
13 dise. Time after time in the past it has been pointed out
14 by consumers' organizations that if only the housewife
15 would refuse to buy a branded article she could go down
16 to the corner hardware store and buy some article in bulk
17 and save a tremendous proportion of the purchase price,
18 but they won't do it, and they are right in not doing it,
19 because life is too short. The consumers will always
20 insist, if they are wise, in dealing with people who they
21 know and in whom they have confidence, and Cyanamid, in
22 building up its trademark, is simply building up a name,
23 building up a trademark so that when a purchaser orders
24 a prescription drug it can order by that trade name and
25 know that when it buys that trademarked item it has the
26 Cyanamid organization and guarantee of quality behind it.

27 If my friend Mr. Frawley wishes to buy
28 unbranded merchandise, or if his client, the Government
29 of Alberta, wishes to buy unbranded merchandise, or if
30 every citizen of that great Province of Alberta wishes to



1 buy unbranded merchandise, there is nothing in the prac-
2 tices of the drug industry which will prevent that being
3 done. Not a thing, they are as free as can be, but I
4 wouldn't be a bit surprised if in his day-to-day activities,
5 not only my friend Mr. Frawley but most of the citizens
6 of Alberta, find themselves refusing to buy unbranded
7 merchandise, but instead buy branded merchandise from
8 people in whom they have confidence and who they know.
9 That is a simple and obvious justification for brand
10 names. It is no different in the drug industry than in
11 any other industry in Canada.

12 The consumer, I would submit, prefers to
13 buy branded products, and so that when the use by the
14 industry of brand names is attacked, those who launch
15 that attack are attacking the judgment of the consumer.

16 MR. WHITELEY: There is some difference
17 here, isn't there? Does the consumer actually buy by
18 brand, does the consumer ever see the brand?

19 MR. WAHN: On a prescription drug?

20 MR. WHITELEY: Yes.

21 MR. WAHN: Well, his agent, the doctor,
22 does.

23 MR. WHITELEY: And the consumer gets a
24 bottle, and I think in most cases there is no brand on
25 it?

26 MR. WAHN: Well, I would think that the
27 name Achromycin would appear on the bottle.

28 MR. WHITELEY: It might be the druggist's
29 own label with that name on it.

30 MR. WAHN: But Achromycin is our trade



1 name for that product, and in my experience that appears
2 on the bottle when you get it from a retail pharmacist.

3 MR. WHITELEY: Yes, but in what position
4 is the consumer to relate that to Cyanamid?

5 MR. WAHN: He just knows that in the past
6 it has been recommended by his doctor and has brought
7 relief. He may not know that it relates to Cyanamid. He
8 does not care. If I buy a branded product I may not know
9 the actual name of the limited company which manufactured
10 that brand of product, but I know the brand and have had
11 past experience with that brand, and I will insist on
12 getting it simply because, as I say, we cannot spend all
13 our time analyzing the relative merits of different
14 products. We buy the brand in which we have confidence,
15 and we do so because ---

16 MR. WHITELEY: I was merely pointing out
17 that the drug industry is somewhat different to a consumer
18 going into a store and finding the name there he knows
19 and the manufacturer's name he also knows, and by his own
20 choice making a purchase.

21 THE CHAIRMAN: Actually, what you often
22 find on prescription drugs is that when you get a bottle
23 or box, the druggist puts his own name on and the only
24 means of identifying the drug is the number.

25 MR. WAHN: Perhaps I am too familiar with
26 the product of our client, but Achromycin is a well-known
27 name to me, as is Aureomycin, and I can see that many
28 people may not know that these products are products of
29 Cyanamid of Canada, but I think many do know the brand
30 name, but if not, you are simply pushing it back one step,



1 and the doctor certainly is impressed by the brand name.

2 My friend Mr. Frawley, in dealing with the
3 question of brand and generic names suggested that he
4 was satisfied that every lot of imported drugs imported
5 into Canada was of proper quality, or was not of inferior
6 quality, and if by any chance any such drugs did get into
7 Canada which might be of inferior quality, then he would
8 have a serious criticism to level at the Food and Drug
9 Directorate. I cannot give page citations, but it is
10 my definite impression that the transcript indicates that
11 it would be an impossible task to impose upon the Food and
12 Drug Directorate to inspect and analyze every lot of drugs
13 imported into Canada, and that the transcript also records
14 that in point of fact there have been many instances
15 where it has been found that imported drugs have not been
16 up to standard. However, I do not think that this point
17 needs particular emphasis.

18 The question of patents has also been
19 discussed at some length before this Commission. The
20 evidence of Mr. Thompson again would indicate that the
21 present position with regard to patents in Canada is not
22 unreasonable, that the patent arrangements are not
23 unduly restrictive. It might also be remarked that this
24 whole question of patents has been investigated quite
25 recently by the Illsley Commission on Patents. It is a
26 highly specialized subject, and although broad sweeping
27 statements can be made as to the restrictive effect of
28 patent arrangements, it must be borne in mind that this
29 is a field which is technical, and which would have to be
30 investigated very, very carefully before it could be



1 established that the present legislation on patents is
2 unsatisfactory.

3 We come finally to perhaps what is the
4 most important point of all, and that is the actual
5 prices of prescription drugs. As Mr. Thompson has said,
6 and as my friend Mr. Frawley has repeated, there has been
7 an anguished outcry about the alleged high cost of pres-
8 cription drugs in Canada, so much so that one might almost
9 think that the industry was on trial by the press and by
10 the newspapers. In fact, Mr. Thompson's evidence shows
11 that the prices of prescription drugs, at least the ones
12 that Cyanamid sells, are not substantially higher than
13 they are in the United States, that in fact the very
14 important antibiotics are almost the same as they are in
15 the United States after including in the price the 11%
16 Federal sales tax.

17 THE CHAIRMAN: I suppose if the Kefauver
18 Committee's ideas were correct, that would not be a very
19 good argument. They seem to think that the prices in the
20 United States are very high.

21 MR. WAHN: Well, that was my next point,
22 although to deal with perhaps very, very briefly with the
23 comparison with foreign prices, but in any event, I think
24 it is established by the evidence that Canadian prices
25 are not the highest in the world, as the press has
26 alleged, and if it were not for the Federal sales tax,
27 which the Government of Canada can remove any time it
28 sees fit, the prices for antibiotics, which is a very
29 important field, would be substantially lower than they
30 are in the United States.



1 Turning just for a moment to foreign prices
2 again, the evidence submitted by Mr. Thompson indicated
3 that Canadian prices were not out of line with foreign
4 prices after he gave effect to the differences in price
5 levels in foreign countries. It may well be that a
6 package of cigarettes costs more in Canada than it does
7 in some other country, or that the price of a bottle of
8 beer is more in Canada than it is in some other country,
9 or that the price of many consumer items is higher in
10 Canada than it is in some other country. It is certainly
11 well recognized by everyone that you cannot simply take
12 the going rate of exchange and convert Canadian prices
13 into English prices for example, and come up with any
14 worthwhile assessment of the relative cost of living in
15 the two countries. I would submit that the evidence
16 before this Commission indicates that Canadian prices
17 are actually not out of line with foreign prices after
18 you give due effect to the difference in price levels
19 generally in these various countries.

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1 I would submit that the evidence before
2 this Commission indicates that Canadian prices are
3 not actually out of line with foreign prices, after
4 you give due effect to the difference in price
5 levels generally in these various countries. I would
6 submit that to the extent that the price of drugs
7 -- let me put it this way -- that the most significant
8 item in the cost of drugs, prescription drugs at the
9 present time is simply the fact that prescription
10 drugs, by their very nature, must be professionally
11 prescribed and dispensed, and since they are an
12 essential element in public health, the greatest
13 possible care must be taken at every stage from the
14 point of production to the point where they reach
15 the ultimate consumer, and that to a large extent
16 the present cost of prescription drugs in Canada
17 results from our existing legislation, and I believe
18 Mr. Thompson in his evidence made this point quite
19 clear. He pointed out that the 11 per cent sales
20 tax was a significant element; he pointed out that
21 there is a substantial cost involved in getting the
22 approval of the Food and Drug Directorate to the
23 sale of new drugs. And on that point I might refer
24 to Mr. Gilbert's testimony in Volume 22, at page
25 2889. At that point Mr. Gilbert was dealing with
26 the difficulties that he faced in merchandising
27 certain drugs, and he had this to say:

28 "The standard of the Food and
29 Drug Act, as I understand it, is
30 that any products which are not



1 in the official Compendium like
2 the British Pharmacopoeia, the U.S.P.
3 or the N.F. are considered as new
4 drugs and in order to be able to
5 sell that particular drug, you
6 would have to process the full
7 application covering the methods
8 of manufacture, the controls
9 that are used during the manufacture,
10 the controls that you have in your
11 own plant with respect to the
12 finished product, full label control,
13 full description of the ingredients
14 used in compounding, you would
15 have to supply toxicity tests,
16 clinical tests and then maybe you
17 will get the application approved.

18 At this point I would like to
19 say that the next bottleneck in
20 the drug industry is going to be
21 the Food and Drug Act after the
22 Patent Act. This is what will
23 maintain high drug prices for a
24 long time to come."

25 Now, I would not wish to suggest that I
26 agree with what Mr. Gilbert has said, but to the
27 extent that he has underlined the fact that these
28 pioneer companies such as Cynamid who do introduce
29 new drugs are the ones who bear the costs he is
30 complaining of, and he is complaining that he cannot



1 get into the business of distributing these new
2 drugs without incurring these costs. Cynamid and
3 others like them do bear these costs, and it is
4 a cost that the consumer eventually has to pay.

5 I was very much impressed this morning by
6 my friend Mr. Frawley's use of two very colourful
7 phrases which intrigued me greatly. The first
8 was the "discipline of the marketplace", and I think
9 the second one was the reference to "captive market."
10 These are extremely colourful phrases, of course.
11 They are also phrases which may be considered somewhat
12 inflammatory, particularly in the context of an
13 inquiry such as this where there has been so much
14 newspaper publicity. I would submit to the
15 Commission that in order to have a proper discipline
16 of marketplace in Canada in the mid-twentieth
17 century it is not absolutely essential that we should
18 have all the practices of an oriental marketplace
19 and have haggling at every level of purchase and
20 sale. I feel quite confident that after that
21 very good roast beef luncheon Mr. Frawley had over
22 at the Chateau Laurier, he didn't haggle one bit
23 on paying the price for that roast of beef luncheon.

24 THE CHAIRMAN: It wouldn't have done him
25 any good.

26 MR. WAHN: And it wouldn't have done him
27 any good if he had. I submit that no matter what
28 Mr. Isaacson said in his submission, this fact that
29 Mr. Frawley didn't haggle over this roast of beef
30 luncheon does not mean he is a captive market. If he



1 were to go back to Alberta and perhaps purchase
2 a thousand Alberta cattle on the hoof he would be
3 in a position to negotiate on the price and that he
4 would there experience the discipline of the market,
5 and the discipline of the market at that level carries
6 all the way on through to the purchase of a roast
7 of beef luncheon at the Chateau Laurier.

8 MR. FRAWLEY: Oh, there I would disagree.

9 MR. WAHN: I think my point is that under
10 our economy it is not essential that there should
11 be price haggling or price negotiation at each level
12 in order to have discipline of the marketplace.

13 THE CHAIRMAN: I suppose Mr. Frawley's
14 position was that there should not possibly be price
15 haggling at every level, that there should be the
16 possibility of it. His contention was that in this
17 field, where the druggist purchasing goods from the
18 manufacturer has no bargaining power.

19 MR. WAHN: If I may take an example. If I
20 go into any department store and buy a tie, again I
21 am not in a position to ask for a tender as to price,
22 and I am not really in a position -- in fact, I do
23 not argue about the price I pay for that tie, nor
24 does Mr. Frawley.

25 THE CHAIRMAN: Unless he goes into another
26 store.

27 MR. WAHN: That is my point, that the
28 discipline of the marketplace is operated at a
29 different level. If I don't like the price I go
30 somewhere else, so the fact that a purchaser in small



1 volume is not in a position to secure price
2 concessions is no evidence that the market is a
3 captive market. Since the phrase has been used
4 so often, I would like to refer to Mr. Isaacson's
5 testimony and say that the phrase "captive market"
6 was Mr. Frawley's phrase and was put into the mouth
7 of Mr. Isaacson, and Mr. Isaacson didn't disagree.
8 I think the text will bear me out. Mr. Isaacson
9 was not disagreeing with Mr. Frawley, but the phrase
10 did not originate with Mr. Isaacson. In actual
11 fact we are -- and I say this most sincerely, Mr.
12 Chairman -- we are most indebted to Mr. Frawley,
13 and I repeat that I say this with all seriousness,
14 because I think he has established quite conclusively
15 that there is no evidence of restrictive practices
16 or monopolistic practices in the drug industry.
17 I refer specifically to the way in which he emphasized
18 this morning the keen price competition which is
19 in supplying the hospital market. This is the
20 best possible evidence that there is no effective
21 price combination in this particular industry.
22 I think the Commission realizes from its own
23 experience that whenever there is or most often if
24 there is an effective combination or effective
25 restraint of competition it usually operates across
26 the board. Mr. Frawley's evidence this morning
27 indicated quite clearly bitter competition in supplying
28 the hospital market, so we do feel we are indebted
29 to Mr. Frawley for emphasizing that point as much as
30 he did.



1 In conclusion, Mr. Chairman, our clients,
2 Cynamid of Canada Limited, is very pleased to have
3 the opportunity of presenting its case before this
4 Commission. It felt it had a good case, and that
5 was, of course, one of the reasons which led it
6 to appear before this Commission.

7 THE CHAIRMAN: You are not suggesting that
8 the reason others didn't appear was because they
9 didn't have a good case.

10 MR. WAHN: That was not intended. Perhaps
11 they felt they could rely on Cynamid to present
12 the case for them as well. But that certainly was
13 one of the reasons which lead us to present our
14 case. We have had a good case. The company feels
15 it is carrying on its operations and functions in
16 accordance with the law and that its operations
17 do perform a valuable service to the community.

18 MR. HANSARD: Mr. Chairman, members of
19 the Commission, just to deal with the last point
20 that was discussed first, I don't propose to be
21 complimentary or flattering to anybody, because I
22 feel I can get my rights by just sticking to the
23 record, and the reason other individual manufacturers
24 relied upon the presentation put forward by their
25 Association will be manifest from what I have to
26 say.

27 Now, I would like to say something first
28 of all, Mr. Chairman, with regard to what Mr.
29 Frawley started out with, and that was that this
30 particular investigation under Section 42, and he



1 emphasized or endeavoured to emphasize that it was
2 something special. Well, to the extent that it is
3 something special, all I have to say is that it is
4 not under Section 42. Section 42 is one of the
5 sections that confers jurisdiction on your
6 Commission. Your Commission is a statutory body
7 and its jurisdiction must be found in the statutes
8 governing it.

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1 Section 42 is not in any way expanded by
2 what happens to a document or a piece of paper in the
3 House of Commons, nor by what a Minister may say, and I
4 say this with the greatest of deference, at all. The
5 ambit of this Commission's jurisdiction is determined by
6 the law, and the only way that jurisdiction changes is
7 when the law is changed, and it is not by tabling what
8 has come to be known as the Green Book. I think that
9 should be borne very carefully in mind because there have
10 been a lot of misconceptions about that during the course
11 of this somewhat extended hearing you have held.

12 Either this is an inquiry under Section 42
13 as it is stated to be, or it is outside the jurisdiction
14 of the Board. I don't say it is. I do say this, and I
15 said it at the outset, and I think it should be said
16 again because there has been some sort of suggestion that
17 some people wanted to keep this thing hushed up: I say
18 people should take due account of what Section 28 of the
19 Combines Investigation Act says. It says that inquiries
20 under this Act shall be conducted in private except that
21 the Chairman of the Commission may order that all or any
22 portion of any proceedings before the Commission or any
23 member thereof shall be conducted in public. That is
24 Parliament talking, and Parliament says that it shall
25 be done in private except that the Commission may do
26 something. The Chairman is only empowered to do something
27 with regard to proceedings before the Commission, and it
28 has always been my contention, and I still think I am
29 right, that this Green Book certainly at the time it was
30 made public, and I submit throughout the proceedings, has



1 never been a proceeding before the Commission. To suggest
2 that because the Green Book did get into circulation and
3 did eventually get tabled in the House of Commons that
4 the jurisdiction of this Commission is in any way widened
5 is, in my mind, quite erroneous.

6 This is an inquiry under Section 42, we
7 are told, and those are the rules I go by.

8 One of the difficulties that people such
9 as myself, who have to advise individual clients as to
10 what they should do in matters of this kind, are
11 confronted with is that a Section 42 inquiry, with all
12 the deference in the world, can get to be something
13 pretty vague. The title assigned to the inquiry, as you
14 are well aware, Mr. Chairman, is "An inquiry under Section
15 42 of the Combines Investigation Act relating to the
16 manufacture, distribution and sale of drugs".

17 THE CHAIRMAN: That is fairly broad.

18 MR. HANSARD: That is pretty broad, and
19 one of the things I would like to emphasize to the
20 Commission is the fact that any individuals I may repre-
21 sent didn't come forward is not because of any desire
22 not to co-operate with the Commission, but there is --
23 and you will recognize this -- an atmosphere and a
24 context under which you are forced to labour which in
25 the minds of the general public suggests that anybody
26 appearing before this Commission is in some kind of
27 trouble under the Combines Investigation Act. Now, that
28 is a fact of life, and when ---

29 THE CHAIRMAN: That, of course, is why I
30 have explained on several occasions there are no



1 allegations against anybody.

2 MR. HANSARD: Absolutely, Mr. Chairman,
3 you have; and I give you full marks for having done that
4 every time. However, your explanation is made within
5 these four walls, or the other four walls within which
6 it was made, and that does not catch up with the atmos-
7 phere I am talking about. I am quite convinced of this,
8 and I am not trying to say that is the sole reason, but
9 I say when an inquiry of this kind is started there are
10 no allegations, as you say, against anybody, and it is in
11 those general terms, and you know that there are people
12 abroad in the land who are anxious to get at individual
13 manufacturers -- let us put it that way -- and it is folly
14 for them to come forward, and I will tell you quite
15 frankly that my advice has been to the people who have
16 consulted me not to come forward. I will leave that.

17 Mr. Chairman, before I turn to what I
18 originally intended to say, I would like to say a word or
19 two about Mr. Frawley's presentation this morning and
20 this Exhibit T-5 that he has produced. I don't propose
21 to go through it at the length he did, but his whole thesis
22 here has been that because of what he describes as the
23 spread of prices on the one hand and the range of prices
24 on the other that there must be something wrong, and that
25 this Commission is entitled to assume there is something
26 wrong, and I say that that does not follow.

27 Let us look for a moment at page 2 of
28 Exhibit T-5, and I am only going to take the one example,
29 because it happens to have four items in it, and that is
30 the one at the bottom of page 2 and carrying over onto



1 page 3 dealing with what is described under the caption
2 "Generic Name" as Tetracycline, and we find across the
3 page something that is called brand name of a particular
4 manufacturer, and manufacturer's cost, list price, price
5 to retail pharmacist, price to wholesaler, price to
6 University Hospital Edmonton, and then we get out to
7 Starkman -- he doesn't seem to have a price on this one,
8 and then to Gilbert's price by generic name, and Empire
9 price by generic name. The first thing I stress, Mr.
10 Chairman, is that taking the four different brand name
11 products that are listed here, the first three of them
12 have a considerable variation in manufacturer's costs,
13 whatever that means; the first and the last vary
14 materially in respect of list price, price to retail
15 pharmacist and price to wholesaler with the second and
16 third. When we come to the price to the University Hospi-
17 tal at Edmonton we find here that there apparently was a
18 quotation called for on a 20,000-unit lot, and I just
19 call your attention, Mr. Chairman, to the variation in
20 quotations made on that 20,000-unit lot, and we were told
21 by Mr. Frawley, with the qualification that he wasn't
22 giving evidence, or didn't wish to, that Nadeau got the
23 business. Nadeau bid \$12.50 as against \$14.95 for
24 Bristol, \$16.50 for Pfizer, and I can't interpret the
25 other one because it is not quite the same.

26 MR. FRAWLEY: I think it would work out to
27 21.

28 MR. HANSARD: All right, it works out some-
29 thing different from the other three, anyway. That is
30 my only point. It is not only when a bid is called for,



1 Mr. Chairman, that there is a difference in these prices
2 under any of these headings, and furthermore when my
3 friend Mr. Frawley on page 2, the first item which carries
4 over -- but the only place where Mr. Gilbert and the
5 Empire people appear is on page 2, presumably because
6 they are being put in as contrasting with all four ---

7 MR. FRAWLEY: That is right -- generic.

8 MR. HANSARD: Yes, generic. There is a
9 \$18 price to the physician, and there is a \$14.40 price
10 to the hospital, and then Empire, whoever they may be,
11 is apparently prepared to deal with anybody at the price
12 of \$9.80.

13 THE CHAIRMAN: For 32, not 100.

14 MR. HANSARD: Well, I don't know what that
15 comes out to.

16 THE CHAIRMAN: It brings them higher.

17 MR. HANSARD: All I am saying, Mr. Chairman,
18 is that there is a fantastic variation between these
19 prices and not only spread-wise but also range-wise.

20 I don't want to get back into too much
21 about captive markets and the normal discipline of the
22 market: I think the first thing we have to bear in mind,
23 Mr. Chairman, is that we are not dealing with the ordinary
24 product that is the subject of trade and commerce. We
25 are dealing with a special kind of product which may be
26 sold only in a special sort of way. We are dealing with
27 prescription drugs. I don't know who originated the
28 "ethical" word, but I prefer "prescription drugs",
29 because "ethical" does not make much sense in that
30 context, and we are dealing with prescription drugs and



1 they may be sold only to certain people, and they may be
2 advertised only to certain people and you can't, therefore,
3 measure the result of operations in respect of the manufac-
4 ture, sale and distribution of those prescription drugs
5 necessarily by the same standards as are applied to the
6 ordinary commercial products with which this Commission
7 usually deals.

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1 Now, if I may go for a moment to what
2 was said by my friend for the Director yesterday.
3 Mr. MacLeod, and while I do not propose to compliment
4 anybody, I would like to say I have the greatest
5 respect for Mr. MacLeod but I do not have quite the
6 same respect for his magnum opus the Green Book.
7 I think Mr. MacLeod has underlined the complete
8 falacy that lies at the root of his thesis in his
9 comment made on the article of Mr. Moley in the
10 Readers Digest. As I took it down he said "and
11 lack of excessive profits does not necessarily mean
12 a lack of excessive prices." Now, I have
13 admiration for the Green Book in that it is a massive
14 compilation and it contains no doubt a lot of
15 very useful information but it also contains a great
16 deal that, in my respectful submission, is not
17 information and should not be acted on as if it
18 were. The main criticism I have to make of the
19 Green Book is that I think it adopts throughout
20 the general thesis that drug prices are high. You
21 can find many references to high but you can also
22 find quite a few to such words as excessive which
23 was used in what I quoted a moment ago, exorbitant,
24 and so on and so on. They are not always necessarily
25 the language of the author of the Green Book but
26 they are there and all I would like to say about
27 all of these words, some of them are more offensive
28 than others, is that I just meet them with the
29 inquiry "how high is up?" High and excessive and
30 exorbitant and so on are all relevant terms --



1 relative terms, I should say, but they are all
2 relative terms and you have to know what you
3 are talking about before you use them.

4 Now, it may be that to the average healthy
5 individual who suddenly finds his doctor prescribing
6 a pill for him and he goes into a chemist and gets
7 a small bottle that has a dozen pills in it and he
8 has to pay a substantial amount for twelve lousy
9 pills, if I might use that expression, it may well
10 be he thinks that is exorbitant, that is fantastic.
11 However, when he says that he is talking in a very
12 colloquial way and he is not taking into account
13 what is behind the production of those twelve pills
14 for him at the time when he needed them. Now, he
15 has been to his doctor and his doctor has discovered
16 there is something wrong with him and his doctor
17 has prescribed for him and his doctor knows that
18 when he prescribes those certain pills, and I am now
19 getting into the question of generic and brand names,
20 his doctor knows when he says on the prescription
21 which is addressed to the man who is going to fill
22 it that he uses a brand name -- I won't get into
23 any particulars about brand names because most of
24 them I cannot pronounce but he uses the brand name
25 and the doctor knows when that is taken into the
26 chemist the chemist will fill that prescription with
27 that particular thing. Now, what is behind the
28 production of that particular thing? What is behind
29 the fact that the doctor knows that that particular
30 thing is what he wants this patient to have? I ask



1 the Commission to sort of back off a bit from all
2 the statistics and quasi statistics which have been
3 thrown at you and give some consideration to just
4 what does happen when a doctor prescribes. Now,
5 there is one thing that I think is overlooked by a
6 lot of people here and that is that the medical
7 profession are in complete command of this situation
8 in the sense that we are dealing with prescription
9 drugs and they are the prescribers. Now, to
10 suggest that any limitation should be put upon the
11 freedom of the professional man to prescribe for
12 his patient is, to my mind, fantastic. He must be
13 free to prescribe what he wants that patient to
14 get and if the patient gets what he prescribes he is
15 the one that is responsible for what happens.

16 Now, there is nothing in the world to
17 prevent the doctor from prescribing under a so-called
18 generic name, nothing in the world, there is nothing
19 in the world to compel him to prescribe for this
20 particular brand name as against that particular
21 brand name; he is free to select. I go to him as
22 his patient and he tells me I need something for
23 my cough so I trust him as my agent to give me the
24 directions to the chemist who has these things on
25 the corner so I can get what I need for my cough.
26 Now, it cannot in reason ever be suggested, I do
27 not think, that any law or any expression of view
28 can ever be imposed on the doctor, a limitation as
29 to whether or not he shall select one as against the
30 other and in that peculiar sort of way he is the



1 customer. It is true he is buying a medicant to
2 be administered to his patient but he is the only
3 one who can be approached in a sales sense, he is
4 the only one who can make the decision as to whether
5 he will get this patient to buy this, that or the
6 other thing. He is the one who is in command of
7 this situation.

8 Now, in those circumstances we hear the
9 representative of the Director telling us that
10 there is waste and extravagance and that responsible
11 manufacturers of prescription drugs in this country
12 go to ridiculous extremes -- that is the word that
13 I took down particularly -- in the methods they
14 adopt to get their products before the man who is
15 going to decide whether or not they are going to
16 be purchased. Now, we have heard a great deal about
17 doctors being annoyed by a mass of mail, by
18 circulars, being annoyed by detail men, by being
19 annoyed by advertising, being annoyed by promotion.
20 However, let us for the moment consider what it is
21 that is being detailed, advertised and promoted.
22 This is not somebody who decides to put a new
23 brand of cigarettes on the market which will be
24 guaranteed not to choke me to death quite as quick
25 as the ones you are smoking. It is nothing like
26 that. This is, by and large, in the case that
27 we are really concerned with here, somebody has
28 discovered that something or some combination of
29 things will be useful treatment for and God help
30 us, let us hope, a cure for some complaints that have



1 been mysteries and have not been under control so
2 far. So, somebody makes that discovery so how does
3 he make that discovery? He does not suddenly wake
4 up in the middle of the night and say: "My goodness,
5 I think if I used that stuff it would do the trick".
6 No sir, somebody has to spend fortunes, and I use
7 the word designedly, to discover that that particular
8 thing or that particular combination of things will
9 do the trick or will get closer to doing the trick
10 than this one or this one or this one or thousands
11 of others. Now, that is research. It is
12 suggested that there is no research being carried
13 on in Canada or very little. We have had one
14 witness who said probably to some extent that was
15 due to economic factors. That may be but the
16 fact is there is a good deal of research being done
17 in Canada and there is a great deal of research being
18 done in respect of these products and when something
19 is discovered that will do the trick how do you get
20 the 12,000 odd physicians in Canada of the English tongue
21 and 4000 or 5000 physicians in Canada of the French
22 tongue aware of the fact? One way to do is, of course,
23 is to try and get your product written up in an
24 article in a medical publication and that is a good
25 way but it may come out two or three months after
26 the event. The other way is a two-fold way: you
27 can send out a pamphlet addressed to your mailing
28 list which may be a damned nuisance and I am sure
29 sometimes they are but they can be sent out with
30 the intention of calling to the attention of the man



1 who is going to use the product in the sense I have
2 said because he won't know about it, doctors are
3 not magicians, they carry on their functions and
4 are just like we lawyers who might go into court
5 and have not heard about some case and it is very
6 awkward if it is against us.

7 MR. WHITELEY: And the other fellow has
8 heard about it.

9 MR. HANSARD: Exactly. These things in
10 the interest of humanity; if for no other reason must
11 be gotten to the medical profession as promptly as
12 possible so as a matter of competition, not as a
13 matter of wasting money or extravagance but as a
14 matter of competition the people who have got all
15 the money tied up in the discovery of this thing
16 first of all and those who get on the bandwagon --
17 I will deal with that in a minute, those who get
18 on the bandwagon later and want to get that product
19 and bring it to the attention of the people who
20 are the only people who can use it and by "use" I
21 mean the doctor because he is to treat his patients.

22 Now, as a matter of competition over the
23 years and they are not so very long and I would like
24 to just say in respect of something that Mr. MacLeod
25 said, he said I think that there had been no turnover
26 of substance in the companies in this industry over
27 the years. It is not in the companies, it is in
28 the products that they are dealing with that there
29 has been this revolution since the last war roughly,
30 and those products were never heard of before. In the



1 old days manufacturers of prescription drugs would
2 produce their brand and the doctors knew about
3 those and things were moving pretty slowly but
4 people were dying faster. Now, as a result of
5 research and a great deal of it carried on in Canada
6 and most of it obviously carried on elsewhere in
7 the world, new products that have remarkable properties
8 in dealing with the ills of the human beings suddenly
9 appear from time to time; it does not happen every
10 day, it does not happen every week necessarily but
11 every once in a while there is a break through.
12 As a result of these developments in the prescription
13 drug industry a method, nobody has suggested any
14 alternative way of doing this, of getting the story
15 to the man who is going to be making use of these
16 things for the benefit of humanity, if you like, a
17 method has been devised and that involves the use
18 of a very expensive system of detail men, promotional
19 literature and advertising.
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1 I admit it is expensive, the industry admits it is
2 expensive. Will somebody tell us how else it can be
3 done?

4 Now, that is the origin of that great
5 segment of the cost of drugs. Now let us look, if we
6 may, at the situation that has developed when one of
7 these new things comes out, and I want to come onto the
8 subject of patents for a short while. Because the manu-
9 facturer has discovered this new thing he becomes, if
10 there is an invention involved, and there is not always,
11 but if there is he is an inventor, and under the law of
12 the land he is entitled to a patent. Now, that patent
13 does not create an absolute monopoly for him at all.
14 There has been a great deal of loose talk before this
15 Commission about people exploiting the monopoly situation,
16 but patents are monopolies created by the law of the land
17 as a reward for invention, and the patents that can be
18 granted to and obtained by people who make inventions
19 in the prescription drug field are far more limited than
20 are the ordinary patents. They are in effect subject to
21 automatic compulsory licensing. Now, there is a great
22 deal of, what shall I say, amazement, expressed in the
23 Green Book about the fact that there has been so little
24 compulsory licensing, and there is the suggestion that
25 were there more then prices would immediately come down.
26 Let us analyze that for a minute. I suggest, and we had
27 my friend very fairly brought up a case where somebody
28 got a compulsory licence in the space of five to six months,
29 but I suggest that if there have been relatively few
30 compulsory licences, it was either because the people who



1 were exploiting the patent or were doing a good enough
2 job, so that it was not worth their while to get in on it,
3 or it was because they were not prepared to get into the
4 manufacture of it and to assume the cost of so doing,
5 because you don't just all of a sudden overnight start
6 manufacturing one of these things. Each one of them is
7 a manufacturing problem, and to suggest that prices are
8 being held up by patent holders because nobody can get in
9 on it is just, in my humble submission, nonsense.

10 We have on the fringes of this thing
11 another group, people who don't want to get licences,
12 don't want to get patents, don't want to do any research,
13 all they want to do is sell drugs, and those people I
14 liken them to the cowbird, Mr. Chairman, or cuckoo, there
15 are two of them I believe, whose habit it is to lay their
16 eggs in somebody else's nest and let him do the dirty
17 work of hatching them out. Now, those people, what they
18 are trying to do by making this great palaver about
19 generic names, by claiming that they are being prevented
20 from getting into the business, all those people want to
21 do, is they want to reap the profit that should be going
22 to reimburse the people who have laid out the money in
23 research and so on to produce the thing that they have
24 now discovered is some substance that as a substance can
25 be purchased, say, for a few pennies. Now, that is the
26 first thing I would like to say about this generic name
27 business, but the second thing, and I think it is most
28 important, is that it is very easy to go through the
29 list and pick out this particular drug and make a big
30 spiel about it, because it happens to be a single-



1 ingredient product. And we hear quite a lot about prolife-
2 ration, I think is the word, is that the one, yes,
3 proliferation of drugs. The fact of the matter is that
4 each one of these drugs, I think most medical men will
5 bear me out on this, each one of these drugs, when they
6 are applied to the treatment of some particular element
7 does a good job in clearing up a man's fever perhaps,
8 but it may produce some very distressing side effects,
9 and one of the things that is continually being done,
10 proliferation to the contrary notwithstanding, is in
11 trying to find combinations or variations of the substance
12 which will produce the same basic initial result without
13 the unfortunate side effects. We all know about that.

14 Now, when you come to a brand name, it
15 may be Terramycine in the main, but it may have a whole
16 lot of other things in it that are intended to deal with
17 that side effect, and this one and so on and so on, and
18 how in the world is any physician going to write a
19 prescription and say I want Terramycine with so many
20 grains of this, so many grains of that, and a couple of
21 grams of this, and so on and so on down the line, and
22 that is what I want for this particular fellow. It
23 couldn't be done, but he knows if he specifies a particular
24 brand name which the literature tells him contains the
25 proportion of those things and produces these results
26 with respect to the side effects if you like, when he
27 knows that it is a very simple thing for him to use the
28 brand name. Now, that, I suggest, rather than the harsh
29 expression used by my friend for the Director, is the
30 real reason for brand names. We are not, I want to find



1 that harsh expression. I have got it written down here
2 somewhere. Let us see how harsh it is. I don't want us
3 to be too rough on my friend. "Pushing the brand name".
4 I think that is harsh. Obviously we are living in a
5 country which I hope is dedicated to the private profit
6 motive, to the system of competitive enterprise, and I
7 think it would be a pretty bold man who came before your
8 Commission, Mr. Chairman, and asserted that we were not,
9 because so far as I read the legislation that governs
10 your activities and the activities of the Director for
11 whom my friend speaks, your complete concern, and I say
12 this advisedly, your complete concern is with competition
13 and the maintenance of competition free, to the extent
14 that the cases may say. I won't get into that, but free
15 competition, and also to prevent unfair competition from
16 destroying competitors, but it is all competition that
17 you are concerned with and what I would like to leave with
18 this Commission in this case is the proposition that there
19 is nothing before you either in the Green Book or in the
20 informed or uninformed evidence that has been made before
21 you, that in any way shows any restrictive trade practice,
22 any restrictive trade practice that prevents or lessens
23 competition, or any practice that creates a monopoly not
24 created by law.

25 Now, I say that advisedly, because when we
26 look at Section 42 it says that you are to concern your-
27 selves, and I don't think you are the ones really to do
28 the inquiring, but we will let that go, to concern your-
29 selves with conditions or practices that are related to
30 monopolistic situations or restraint of trade. Now, who



1 in the world would ever think that the limited and
2 strictly restricted monopoly that is granted by the law
3 of the land with a patent granted to an inventor is
4 something that can be described as a monopolistic
5 situation? Of course it isn't. The law, wisely or
6 unwisely, but for a great many years, has rewarded inven-
7 tors for a limited space of time with a monopoly. In
8 the ordinary case, not the drug case, it used to be 18
9 or 17 years. The monopoly is subject to the fundamental
10 condition that if he does not supply the public need in
11 a reasonable or proper manner he can be compelled to
12 give a licence. In the drug case, whether he is supplying
13 it or not, he can be compelled to give the licence. Now,
14 it is nonsensical to my way of thinking to say that
15 because litigation that may develop over whether or not
16 the man qualifies for a licence takes time, that therefore
17 that is a monopoly situation. It is ridiculous to my
18 mind to say that, because inherent in every patent there
19 is the element of monopoly that that is a monopoly situation.
20 What I am saying, Mr. Chairman, is that under Section 42
21 when the law talks about monopolistic situations it is
22 talking about something not created by the law but
23 created by the devices of man, and I think that is very
24 much reinforced by the provisions of Section 30 of the
25 Act, about which we have not heard very much here, but
26 Section 30, as you know, is the section which empowers
27 the court to deal with an abuse of patent or trademark
28 rights.

29 Now, if there is to be no patents, if
30 there are to be no trademarks, I ask you what is the



1 incentive to people to spend millions of dollars, I use
2 that advisedly, on research and development of products,
3 merely to have some Gilbert come along and start selling
4 the basic thing, which may be a thing of bark, or some-
5 thing which costs two cents, I don't know, but selling
6 the basic thing and reaping the reward that should have
7 been his. I say that the whole thing makes no sense,
8 and I say when obviously sincere but equally obviously
9 misguided people come before your Commission and talk
10 about the high cost of drugs, and when you press them
11 for their sources of information they say it is the Green
12 Book, and no more, and I stress that in this entire
13 inquiry, apart from people like hospital directors, the
14 odd doctor, and let us take a good one, Dr. Morrell, all
15 the rest of the people, the people with the alleged
16 complaint, have either had an axe to grind, I won't
17 mention them by name, but an axe to grind because they
18 are interested in getting in on the gravy train, if you
19 like, I don't care, or they have been misled and they
20 are not talking from firsthand knowledge at all. Now,
21 in those circumstances I think this Commission should
22 take a quite long look before falling for what I suspect
23 a lot of these people fall for, and that is the proposi-
24 tion that the manufacturers of prescription drugs are
25 in the same category as the people who bombard us on the
26 television, and who I have got noted down here as the
27 tired blood boys. Just for fun, last night I noticed
28 some of the things that came to my mind. I happened to
29 be so located in Montreal that my best station comes from
30 across the line, but we get the same thing here to a



1 lesser degree, thank God.

2 MR. FRAWLEY: Do they have the grey
3 sickness over there too?

4 MR. HANSARD: Yes, and they have something
5 which controls useless coughing, that is what they say.
6 They have a fellow that comes out in agony from his
7 sinuses. He swallows one of these preparations and turns
8 round and says to the audience, "I feel great and something
9 does not affect my stomach", and he is the fellow that
10 in the bosom of my family I have named the post-nasal
11 drip. People come along and say "What do doctors do?
12 Four out of five doctors prescribe the ingredients in
13 this." Then a fellow comes out and then there is a whole
14 bunch of hammers and things indicating that he has got a
15 headache. Then you get statements like independent tests
16 prove that so-and-so is 25% more effective. Four out of
17 five Hollywood stars and so on. Don't be half safe, and
18 so on, and this sort of thing goes on, and I am thoroughly
19 convinced that a lot of the people believe that the drug
20 manufacturers, because these things are all sold in
21 drugstores and they are called drugs, I am thoroughly
22 convinced that a lot of people think that the serious
23 manufacturers of prescription drugs are at least to some
24 extent responsible for that kind of thing, and I say they
25 are not, and if that is the brush they are tarred with,
26 well it is high time that somebody was informed that they
27 are not. They are people who are carrying on their
28 business, and they are advertising, it is true, and I
29 don't hold out any great brief for advertising myself.
30 I wouldn't have thought of all these things that I am



1 if I were an enthusiast in advertising, I am not, and I
2 believe that my friend Mr. MacLeod referred to something
3 in this set-up as a rat-race. All I ask, Mr. Chairman,
4 is whatever became of Pear's soap? That is the classic
5 example of people who stopped advertising, and you can
6 now find it in certain clubs.

7 MR. FRAWLEY: The Rideau Club.

8 MR. HANSARD: Yes, and three or four
9 others I go to. All I can say about it is that it is a
10 necessary evil, but even the people in the drug business
11 haven't found out how to get along without. And on top
12 of that, of course, is not advertising, but promotion.
13 Now, promotion sort of gives the impression that there
14 is some fellow with a big waxed mustache behind the scenes
15 promoting something, and he is a villain. Promotion here
16 means that they are trying to get the particular product
17 that has been discovered to do a new thing for the
18 benefit of the people to the people who can prescribe it.

19 THE CHAIRMAN: Why don't they call it
20 education?

21 MR. HANSARD: It would be a much nicer
22 word, much.

23 I just want to say one final thing, and
24 that is on the question of the comparison of United
25 States and Canadian prices, and Mr. MacLeod said that if
26 you knocked off the 11% sales tax, our prices here are
27 practically the same, and you made the comment: "Well, if
28 Mr. Kefauver is to be believed that is no good". We are
29 not concerned with that, I say, whether they are too
30 high or not.



1 But just let's be fair about this thing. We have,
2 I think, less than 10 per cent of population, less than
3 10 per cent market in Canada, and in any line of
4 endeavour I have ever heard of, and I am sure it is
5 true in the drug trade, the manufacturer who has a
6 small market has higher costs than the manufacturer
7 who has a large market. I am not going to concede
8 that Mr. Kefauver is right about the American prices,
9 but I think even Mr. Kefauver has found it necessary
10 to back down from some of the things that happened
11 in that hearing. But, in any case, I do point out
12 that quite apart from the fact that fair trade
13 prices which my friend talks about in the States are
14 usually 10 per cent below ours is a small and very
15 limited market. Our runs through our plants are
16 necessary short ones.

17 I think that is all I have to say. Thank
18 you, Mr. Chairman.

19 THE CHAIRMAN: Has anybody else anything
20 they wish to present to the Commission in summation
21 or argument?

22 MR. FRAWLEY: If Mr. MacLeod has something
23 to say, but I would like the privilege of a few
24 remarks to comment on something Mr. Wahn said
25 and one or two on what Mr. Hansard said.

26 MR. HANSARD: May I have the right of
27 sub-reply?

28 MR. HUME: Yes, Mr. Chairman, there are
29 certainly some things I would like to mention. I
30 was through with my submission, and I think the



1 Commission should consider that Mr. Frawley was
2 through. But there are a few points I think I
3 could make a useful contribution on.

4 MR. FRAWLEY: I have every confidence in
5 the Commission. I don't think that the few words
6 I have to say will either make or break my submission
7 or destroy anything.

8 THE CHAIRMAN: I think, Mr. Frawley, we
9 better -- unless there is something that you think
10 is completely erroneous, we may be mislead by
11 something.

12 MR. FRAWLEY: No. I think I will have
13 to make a correction. I will check it and give it
14 to you by mail. I think that my Empire prices, I
15 took them out of Mr. Turnbull's list -- I shouldn't
16 call Mr. Turnbull's list, but the price list that
17 sells for \$6.00 by the Canadian Pharmaceutical
18 Journal, Empire has prices in there, and I think I
19 took my prices from there. That is what I want to
20 check on.

21 MR. MACLEOD: Mr. Chairman, members of
22 the Commission, I will be as short as I possibly
23 can. There is one question or one matter that
24 has been repeated several times. It seems to be
25 a cause of confusion. It is stated on one hand
26 that when the generic manufacturer puts his name on
27 the box isn't he putting his brand name on it.
28 That has nothing to do with it, because it is part
29 of the regulations that every manufacturer must put
30 his name on. I think the point that really gave



1 rise to this was the statement that -- or when it
2 was brought to the attention of the Commission that
3 Gilbert in his catalogue, to ensure getting proper
4 drugs at proper prices, the doctor should put
5 Gilbert's name on the prescription, and it was
6 argued that that was the same as Gilbert putting
7 his brand name on.

8 THE CHAIRMAN: You mean something like
9 Gilbert's tetracycline?

10 MR. MACLEOD: He would like that to be
11 done.

12 I would direct your attention to the
13 evidence of Gilbert and to the evidence of the
14 druggist, which was in complete accord. In other
15 words, the druggist said you needn't necessarily
16 get a cheaper price by having a generic name, because
17 if you prescribe tetracycline I will put in any
18 tetracycline which I feel is of a good quality.
19 So that Gilbert putting that on his catalogue was
20 an inducement to the doctor to ensure, if he wanted
21 to have a cheaper, lesser-priced product, he
22 can do so. Every manufacturer has to put his name
23 on, and it is admitted and commonly accepted that
24 certain of the large manufacturers sell certain
25 products under general names, but, of course, their
26 name is on the box. In the case of the brand
27 name product, we have the name of the manufacturer,
28 the name of the generic drug, in big letters, bigger
29 than anything else, aureomycin, largactil or whatever
30 it is.



1 There was some reference this morning --
2 I think this was of Mr. Turnbull -- to evidence of
3 correspondence that was put in in British Columbia
4 supporting the fact that generic name products might
5 be lower. I have the correspondence here, and the
6 only remark I want to make about it is that of
7 the names he lists of those companies selling inferior
8 products -- that is his allegation, not mine -- to
9 the Air Force at cheaper prices, three of them
10 include members of the Canadian Manufacturers'
11 Association, that is the Canadian Pharmaceutical
12 Association.

13 THE CHAIRMAN: You mean the Pharmaceutical
14 Manufacturers' Association?

15 MR. MACLEOD: Canadian Pharmaceutical
16 Manufacturers' Association. Three of those who
17 are alleged in rather rough language to be cheap
18 and inferior --

19 THE CHAIRMAN: Were they selling under
20 brand names?

21 MR. MACLEOD: Some of them were, some of
22 them were not. A large proportion were. I wasn't
23 going to go into the matter at all, but just to point
24 that out.

25 MR. FRAWLEY: We can't have too much
26 information.

27 MR. MACLEOD: I don't want to go into it
28 because the letters were read in in Vancouver. Mr.
29 Turnbull says he didn't say it. I have a note. I
30 am not quite sure who said it.



1 Sometime ago I made reference to an
2 article about compulsory licensing under The Food
3 and Drug Act, and I can give you the exact decision.
4 It is headed "Decade of Decisions on Food and Medicine
5 Licenses (1951 to 1961)" and it was a paper read
6 on January 11th, 1961, to the institute of Canada
7 at an informal meeting in Ottawa. It appears on
8 page 15 of 36 C.P.R., part 1. It was read by
9 Peter Kirby. I simply drew that to the Commission's
10 attention in Toronto because its reports cover at
11 least every decision in respect to the compulsory
12 licensing section of the Patent Act. It is a very
13 minor point, but I might as well get it right.

14 Yesterday I referred to an article by
15 Dr. Model which was referred to by Dr. Schecter, and
16 the correct title of the magazine or journal in
17 which that appeared is Clinical and Pharmaceutical
18 Therapeutics of January, 1961.

19 There were some questions raised about
20 the cost of living index, and somebody speaking
21 I think said they didn't know what it covered. My
22 information informally from the D.B.S. people is that
23 the cost of living index for prescriptions in Canada
24 is now based on information obtained about the
25 following products: penicillin, tetracycline,
26 phenobarbital, secobarbital and meprobamate.

27 There was some discussion this morning
28 by my friend Mr. Frawley about manufacturing in
29 Canada, and some question was raised whether Schering
30 manufactured in Canada; that is the cortizones, and



1 so on. According to an article in Fortune Magazine
2 in 1958, they don't manufacture in the United States
3 either; manufacturing is farmed out, including the
4 preparation of the tablets as well. That refers
5 just to these corticosteroids. They may produce
6 a small amount, but the bulk is farmed out, and a
7 description of that is contained in the article:
8 Schering Structural Roulette", from Fortune
9 Magazine, August, 1958. The article is referred to
10 several times in the statement.

11 There was some argument, I believe, by
12 my friend Mr. Wahn based on the fact that Gilbert
13 didn't know, apparently didn't know the prices of
14 Cynamid, and from that he deduced that there
15 couldn't be a combine because there wasn't an
16 exchange of information. Of course, we are not
17 alleging that there was a combine in the ordinary
18 sense, and even if there were, we are not alleging
19 that Gilbert was a member, because he has been
20 attacking the larger drug companies for years.

21 There are just a couple of things I want
22 to say about prices. Mr. Hansard worked himself
23 into very high indignation about the Director and
24 my use of certain phrases, and so on. I do accept
25 criticism of my argument, but I do not like to be
26 misrepresented. The fact is that at page 239 of the
27 statement, paragraph 424 -- this is a summary of
28 what the statement purports to say -- it states:

29 "All that can be said is that,
30 in relation to prime cost, the selling



1 prices and markup taken on newer
2 patented drugs are substantially
3 higher than on commoner and
4 older drugs. Similarly, the
5 selling prices of and the markups
6 taken on established specialty
7 products are normally somewhat
8 higher than those taken on more
9 standard products. At the other
10 extreme, many drug companies
11 carry products for which there
12 is a very limited demand and on
13 sale of which, for this or other
14 reasons, they lose money..."



Y/dpw

1 Now, the Director has not used the word
2 "high", I don't think, once in this statement in the
3 sense in which he is alleged to have used it by Mr.
4 Hansard. We have quoted certain statements made by
5 others, but our conclusion is set out in black and white,
6 and there it is.

7 MR. HANSARD: I don't want to pick at it
8 at all, but one of the things I saw right at the
9 beginning in a preface attached to the copy of the
10 statement I got was, "To avoid misunderstanding, it is
11 emphasized that this is not a report under the Combines
12 Investigation Act". Nobody noticed that, and it has been
13 treated as a report throughout, and people don't always
14 look at where you sum up. All I am suggesting is that you
15 do convey the general impression throughout this thing
16 that in your view prices are high.

17 MR. MACLEOD: I take exception to your
18 interpretation.

19 MR. HANSARD: Well, we will leave it to
20 the Commission.

21 MR. MACLEOD: There is no use of us
22 arguing about it.

23 On waste and extravagance and the necessity
24 for advertising, the reasons for advertising, we could
25 look at the statement at 241. Again I don't want to
26 read it, but merely point out that the sub-section of
27 the statement starts with, "Alleged wasteful expenditures".

28 MR. HANSARD: You didn't say that yesterday.

29 MR. MACLEOD: And there are a number of
30 paragraphs there, but I think the arguments that are



1 made pro and con are carefully set out.

2 On the proliferation of drugs my learned
3 friend said a good deal too, and I would suggest if you
4 look at paragraph 435 on page 243 and at paragraph 49
5 on page 25 that the situation relating to proliferation
6 of drugs and the other aspect which he dragged in about
7 more forms of the same drug being available from
8 established manufacturers than from so-called ethical
9 drug manufacturers, I think the statement is set out
10 correctly, clearly and succinctly, and in the case of
11 costs, in the case of waste and extravagance, all Mr.
12 Hansard has done, with respect, is to set up two or three
13 straw men and take some good healthy swings at them, but
14 he is talking about what was said in the section. Nothing
15 of what he said is in this statement, and that can be
16 verified by reading the statement.

17 As to the use of the words "proliferation
18 of forms" I point out again that is a term that was
19 taken from medical literature, statements by medical men,
20 and it is expressly stated in the statement that the
21 Director claims no capacity or ability because it is a
22 medical term, to say anything about it.

23 There was one interesting point my friend
24 Mr. Hansard raised in connection with compulsory licensing,
25 the cost of manufacture, and that is an aspect that has
26 not been fully explored in the statement, perhaps. It
27 is true, as he pointed out, that a person who wants a
28 compulsory licence -- they have to manufacture in Canada
29 and that may cost a good deal, but the firm that is
30 selling the product under the patent itself does not have



1 to manufacture in Canada and, as we know, very little
2 manufacturing of basic drugs is done in Canada. So that
3 that is a further point in connection with compulsory
4 licensing which perhaps should have been more fully
5 developed in the statement.

6 In dealing with the prices of drugs, this
7 has come up repeatedly. It has come up in all the
8 arguments of my learned friends, and if they are addressing
9 themselves to arguments made in the course of hearings
10 before the Commission there may be some substance to it,
11 but the statement of the Director is very careful to
12 point out that there is no price of drugs as such. There
13 is one price for one drug, there is one price for another
14 drug, and so it goes, and that, of course, is what I was
15 questioning Professor Dixon about yesterday in this connec-
16 tion as to the validity of lumping them altogether. But
17 this has been so carefully emphasized in the statement
18 that I find it difficult to appreciate these general argu-
19 ments being put forward, because it may be they are
20 directed against something that was said by witnesses;
21 they certainly are not directed against the statement
22 because one of the bases for the inference drawn by the
23 Director on the material available was the difference in
24 the history in the case of the older penicillin and, for
25 example, the new antibiotic drugs. In the case of the
26 older penicillin exposed to the full forces of competition,
27 or the forces of the market as Mr. Frawley would say, we
28 found it was down, down, down, down. In the cases of the
29 newer drugs, protected by patents, we didn't find that
30 at all, and to say drug prices are high is meaningless.



1 What the Director has pointed out is that prices of some
2 drugs are higher than the prices of other drugs, and the
3 Director alleges that this is so for certain reasons, and
4 that is the whole basis of the statement to you.

5 MR. HANSARD: I don't want my friend to
6 feel I was making an unwarranted attack on his statement,
7 but I am looking at paragraph 31 on page 15, and I find
8 there this sentence, "Usually, dosage forms of a drug
9 which is controlled by one or a few firms are sold at a
10 high price (in relation to actual cost of manufacture).
11 The importer, on the other hand, usually sells its dosage
12 forms at a lower price."

13 MR. MACLEOD: How high is high in relation
14 to cost of manufacture, which is exactly what was said
15 in the summary which you have said did not agree with the
16 statement.

17 MR. FRAWLEY: That is what my exhibit said
18 too.

19 MR. MACLEOD: My friend Mr. Wahn exhibited
20 a copy of Cyanamid's catalogue of prices to hospitals,
21 and said they reflected a price 10% below the price
22 charged to retail druggists, and since that was so in the
23 case of his company certainly none of the allegations
24 about lower prices to hospitals and governments, and so
25 on, would apply in his case.

26 I just draw the Commission's attention to
27 page 174, paragraph 298, and under Tetracycline we find
28 that Cyanamid made tenders to the Canadian Government
29 quoting prices ranging from \$16.50 to \$17.01. At the
30 time these tenders were made, following the information



1 through from the top of -- as a matter of fact, it is
2 actually set out completely in 296 on the preceding page,
3 173: at this time the price to hospitals was \$13.60, so
4 that even among the very limited number of instances
5 quoted in the statement we find one at which Cyanamid
6 tendered at very slightly less than half the price to the
7 hospitals.

8 My friend Mr. Hansard speaks of the range
9 of prices.

10 MR. HANSARD: In 298 they give two prices.

11 MR. MACLEOD: The situation is that it is
12 based on an examination of a number of tenders during the
13 period, and during that period of time the first price
14 was the highest price quoted by the individual firm.

15 MR. HANSARD: Gilbert caught my eye there:
16 he is the high man on the totem pole.

17 THE CHAIRMAN: He is both high and low.

18 MR. MACLEOD: There are a number of other
19 minor points, Mr. Chairman, but in view of the time and
20 the relative unimportance of them I think perhaps that
21 is all I have to say.

22 THE CHAIRMAN: Gentlemen, that would seem
23 to conclude the hearings in this inquiry. As I said
24 before, there is a possibility -- I don't know whether it
25 is more than the very barest possibility -- but one or
26 more of the French-speaking groups may wish to present
27 something. I pointed out in Montreal we had not been
28 able to get a translation into the French language. We
29 were told at that time it would be forthcoming shortly,
30 but it has not appeared yet. They haven't had it yet.



1 If they should, after getting the French version,
2 express a desire to make some submissions, I think we
3 would arrange that. Apart from that, this will conclude
4 the hearings of the inquiry.

5
6 --- Adjournment.

